Office Supreme Court, U.S.
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CLERK

No. 82-1371

In the Supreme Court of the United States

OCTOBER TERM, 1983

MARGARET M. HECKLER,
SECRETARY OF HEALTH AND HUMAN SERVICES,
Petitioner

v.

LEON S. DAY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 14, 1983
CERTIORARI GRANTED APRIL 25, 1983

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY, ET AL.

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION and WELFARE

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1978		
Nov. 15	1	Filed Plaintiff's Application to Proceed in Forma Pauperis.
Nov. 15	2	Filed Plaintiff's Affidavit to Accompany Application to Proceed in Forma Pauperis.
Nov. 15	3	Filed Plaintiff's Application for Temporary Restraining Order.
Nov. 15	4	Filed Plaintiff's Memorandum in Support of Injunctive Relief. cp
Nov. 15	5	Filed Certificate of Service. cp
Nov. 24	6	Filed Order granting in forma pauperis application. lgl/cb
Nov. 24	7	Filed Plaintiff's request for withdrawal of Application of T.R.O. rar
Nov. 24	8	Filed Amended Complaint-Class Action. rar
Nov. 24	9	Filed Plaintiff's Interrogatories. rar
Nov. 27	10	Filed Complaint—Class Action.
Nov. 27		Issued Summons, rer

DATE	NR.	PROCEEDINGS
1978		
Dec. 1	11	Filed Motion of Amedie Maurais to Intervene as Party Plaintiff.
Dec. 1	12	Filed Memorandum in Support of Motion to Intervene.
Dec. 1	13	Filed Verified Complaint of Intervening Plaintiff Amedie Maurais. cp
Dec. 4		Received and attached a copy of Intervenor Maurais' request for reconsideration, Exhibit #4, to the Complaint. (#13) cp
Dec. 5	14	Filed Summons; returned served. cp
Dec. 14	15	Filed Defendant's Memorandum in Opposition to Motion of Amedie Maurais to Intervene as Party Plaintiff. (P#11) cp
Dec. 19	16	Filed Intervenor, Amedie Maurais', Reply Memorandum in Support of Motion to Intervene. cp
1979		
Jan. 25	17	Filed Defendant's Answers to Plaintiff's Interrogatories filed Nov. 24, 1978, P#9. cp
Jan. 31	18	Filed Defendant's Motion for Enlargement of Time to Answer or Move with Memorandum of Law in Support. cp
Feb. 5		In open Court before Judge Holden. Ronald Lospennato, Esq., for plt Peter Hall, AUSA.
Feb. 5		Hearing on Motion of Amedie Maurais to Intervene as Party Plaintiff.
Feb. 5		Statements made to the Court by Mr. Lospennato for proposed intervene followed by Mr. Hall.
Feb. 5		ORDERED: Motion granted.

DATE	NR.	PROCEEDINGS
1979		
Feb. 5		Hearing on Government's Motion for Enlargement of Time.
Feb. 5		The plaintiff having consented thereto, it is ORDERED: Motion granted.
Feb. 5		Case to be set for class action certification. lgl
Feb. 5	19	Filed Notice of Appearance of Anne M. Gulyassy, Esq. for defendant. gjl
Feb. 5	20	Filed ORDER—that the defendant's Motion be and hereby is granted (Motion for Enlargement of Time to Answer or Move) and an enlargement of time to answer or move be and is hereby granted until 10 days after service of this Court's order allowing or denying the pending Motion to Intevene of Amedie Maurais. Mailed copy to attorneys. cp 2-8
Feb. 13	21	Filed Pltfs' Motion for Class Certification.
Feb. 13	22	Filed Memo in Support of Motion for Class Certification. gjl
Feb. 16	23	Filed Supplement to Defendant's Answers to Plaintiff's Interrogatories.
Feb. 23	24	Filed Government's Answer to Amended Complaint.
Feb. 23	25	Filed Government's Answer to Verified Complaint of Intervening Plaintiff, Amedie Maurais. (#P13) cp
Feb. 27	26	Filed ORDER—that defendant's time to file his Opposition to Class Certification be and is hereby extended to and including 2/28/79 (Copies mailed to Attorneys).
Mar. 8	27	Filed Defendant's Opposition to Plaintiffs' Motion for Class Cert. lgl

DATE	NR.	PROCEEDINGS
1979		
Apr. 5	28	Filed letter of defendant stating typographical error in P.27, Deft's Opposition to Pltf's Motion for Class Certification, which should be: In the first full paragraph, line 14 should read "approximately 57% of the hearings requested after January". lgl
Apr. 10	29	Filed Plaintiffs' Reply Memorandum in Support of Class Certification.
Apr. 13		In open Court before Judge Holden. Richard Munzing, Esq., for pltf.; Peter Hall, AUSA, Anne M. Gulyassy, Esq., for Government.
Apr. 13		HEARING ON PLAINTIFF'S MOTION FOR CLASS CERTIFICATION.
Apr. 13		Statements made to the Court by Mr. Munzing, followed by Miss Gulyassy, further followed by Mr. Munzing, Miss Gulyassy.
Apr. 13		Decision reserved. lgl
June 15	30	Filed Opinion and Order: Plaintiff's Motion for Class Certification is granted. Copy mailed to attys. gl
July 25	31	Filed Plaintiffs Motion for Summary Judgment.
July 25	32	Filed Memorandum in Support of Plaintiff's Motion for Summary Judgment. rpd
Oct. 10	33	Filed Stipulation: Date for Deft. to serve a Motion for Summary Judgment shall be extended from 8/27/79 to 9/10/79 for the reason that draft regulations relevant to this litigation were recently drafted by the Secretary—Counsel requests this extension to incorporate the draft regulations in the Motion for Summary Judgment. lgl/gl

DATE	NR.	PROCEEDINGS
1979		
Oct. 11		Upon consideration of foregoing Stipulation, it is
Oct. 11		ORDERED: Approved. Mailed copy to attys. rer
Oct. 17	34	Filed Deft's Second Supplement to Deft's Answer to Pltf's Interrogatory #9.
Oct. 17	35	Filed Deft's Cross-Motion for Summary Judgment.
Oct. 17	36	Filed Memorandum in Support of foregoing Motion. lgl/gl
Dec. 1	37	Filed Pltfs' Reply Memo re Motion for Summary Judgment. rer
Dec. 31	38	Filed Opinion and Order—that the Plaintiff's Motion for Summary Judgment is granted on the undisputed facts presented. However, the court will defer entry of a final order to accomplish this result until the remaining claim for relief in the reconsideration procedure is heard and determined. Plaintiff's Motion for Summary Judgment, P#31 and the Defendant's Cross-Motion for Summary Judgment, P#35 are DENIED. The Clerk will schedule the case for trial on the reconsideration issue. It is so ORDERED. Copy to attorneys. cp
1980		
Jan. 7		At the call of the Calendar before Judge Holden, it was ORDERED: Passed. lgl
Jan. 15	39	Filed Pltfs' 2nd Interrogatories. rer
Feb. 20	40	Filed Deft's answer to Pltf's 2nd Interrog. gww
Feb. 17	41	Filed Plaintiff's Motion for Further Summary Judgment.

DATE	NR.	PROCEEDINGS
1980		
Feb. 17	42	Filed Memorandum in Support of P#41. cp
Mar. 26	43	Filed Deft's Motion for Enlargement of Time to Oppose Pltf's Motion for further summary judgment. Rule 9 letter sent. rpd
Apr. 3	44	Filed ORDER—that the motion, P#43, is granted; that defendant shall have until 4-14-80 to oppose plaintiff's motion for further summary judgment. Copy to attorneys. cp
Apr. 4	45	Filed Defendant's Memorandum in Support of P#43, Motion for Enlargement of Time. cp
Apr. 15	46	Filed Defendant's Motion for Enlargement of Time to Oppose Plaintiff's Motion for Summary Judgment.
Apr. 15	47	Filed Defendant's Memorandum in Support of P#46. cp
Apr. 16	48	Filed Order—Deft's Motion for Enlargement of Time etc, P#43, granted Deft. to have until 4-25-80 in which to Oppose Motion for Further Summary Judgment; Clerk to sched. hear. on pend. Motion on May 2, 1980. Mailed cpy to attys. rer
Apr. 25	49	Filed Deft's Motion for Partial Summary.
Apr. 25	50	Filed Deft's Memo in support of P#49 and in Opposition to Pltfs' Motion for Further Summary Judgment, P#41. Exhibits A thru D inc. & in separate folder. rer
Apr. 30	51	Pltf's Reply Brief.
May 2		In open Court before Judge Holden. Richard H. Munzing, Esq. for Pltf.; Anne M. Gulyassy, Esq. for Deft.

DATE	NR.	PROCEEDINGS
1980		
May 2		HEARING ON P. 41 PLTF'S MOTION FOR FURTHER SUMMARY JUDGMENT.
May 2		Statements made by Mr. Munzing, Ms. Gulyassy, Mr. Munzing.
May 2		Decision Reserved.
July 14	52	Filed MEMORANDUM OF DECISION—the motions for summary judgment must be DENIED for reasons stated. It is so ORDERED. Copy to attorneys. cp
Aug. 4	53	Filed Plaintiffs' Third Interrogatories. cp
Sep. 11	54	Filed Defendant's Answers and Objections to Plaintiffs' Third Interrogatories and Requests for Admissions, P#53
Sep. 19	55	Filed Pltfs' Motion for further Summary Judgment, Motion for Order Compelling Disc. & Motion to direct entry of Final Judgment.
Sep. 19	56	Filed Pltfs' Memo in support of P#55, Motion for further Sum. Judg.
Sep. 19	57	Filed Pltfs' Memo in support of P#55, Motions for Order Compelling Disc. & directing entry of Final Judg. (with attach.) rr
Oct. 7	58	Filed Stipulation, that the Defendant shall have until Oct. 15, 1980 to respond to P#55, Plaintiffs' Motion for Further Summary Judgment, Motion for Order Compelling Discovery and Motion to Direct Entry of Final Judgment. cp
Oct. 14		Ordered, P#58, it is so ordered this 14th day of October, 1980, that the deft. shall have until 10-15-80 to respond to P#55, Plaintiff's Motion for Further Summary Judgment, Motion for Order Compelling Discovery and Motion to Direct Entry of Final Judgment. Copy to attorneys. cp

DATE	NR.	PROCEEDINGS
1980		
Oct. 20	59	MOTION for Enlargement of Time to respond to P#55 by defts.
Oct. 20	60	MEMORANDUM in Support of Motion. gww
Oct. 22	61	Filed Deft's Opposition to Pltfs' Motion for further Summary Judgment.
Oct. 22	62	Filed Deft's Opposition to Pltfs' Motion for Order Compelling Discovery and Motion to Direct Final Judgment. rpd/lgl
Nov. 10	63	Filed Pltfs Reply Brief in Support of Pltfs Motions. gww
Nov. 19		In Court before Judge Holden. R. Munzing, Esq., for pltf.; A. Gulyassy, Esq., for deft.
Nov. 19		HEARING ON PLAINTIFF'S MOTION TO COMPEL.
Nov. 19		Statements made by Mr. Munzing, Miss Gulyassy.
Nov. 19		Mr. Munzing waived statements on Plaintiff's Motion for Further Summary Judgment.
Nov. 19		HEARING ON PLAINTIFF'S MOTION TO DIRECT ENTRY OF FINAL JUDGMENT.
Nov. 19		Statements made by Mr. Munzing, Miss Gulyassy, Mr. Munzing.
Nov. 19		Decision reserved. lgl
Dec. 5		CALENDAR CALL before Holden. ORDERED: Passed. lgl
Dec. 8	64	Filed Deft's Supplemental Opposition to Pltfs' Motion to Direct Entry of Final Judgment. rpd

DATE	NR.	PROCEEDINGS
1980		
Dec. 30	65	Filed Memorandum of Decision—Court preliminarily enjoins deft from scheduling administrative hearings more than 90 days after a timely request for such hearing is made. Designated time period will not apply when 1) claimant or his representative causes a delay by failing to provide information needed for adjudication 2) claimant or his representative requests a delay 3) claimant or his representative fails to appear for scheduled hearing 4) delay is in some other way attributable to claimant or representative. Injunction will extend from date of this order to time case comes to final resolution on the issue of the delay in the reconsideration proceedings. Mailed copy/attys. rer
1981		
Feb. 27	66	Filed Notice of Appeal by Government. Mailed copy to Clerk Fusaro (& copy of docket enteries); Judge Holden; attorneys of record & Court Reporter. gc
Mar. 5	67	Filed Pltfs' Motion for Partial Summary Judgment.
Mar. 5	68	Filed Pltfs' Memorandum in Support of P#67. cp
Mar. 19	69	Filed Defendant's Motion for Enlargement of time.
Mar. 19	70	Filed Memo in support of P.69. lgl
Mar. 23	71	Filed Scheduling Order—Record on appeal to be filed on or before 3-31-81. cb/lgl
Apr. 6	72	Filed Stipulation of Dismissal of appeal—each party to bear their own costs—with Circuit Court's approval thereon. cb

DATE	NR.	PROCEEDINGS
1981		
Apr. 10	73	Filed Defendant's Answers to Plaintiffs' Third Set of Interrogatories. dhm
Apr. 20	74	Filed Stipulation—The parties, by their undersigned attorneys, hereby agree as follows: 1. That defendant shall file his opposition to Plaintiffs' motion for partial summary judgment on or before April 30, 1981. 2. That, in light of the fact that counsel for plaintiffs will be on vacation until May 4, 1981, plaintiffs shall file their reply brief, if any, on or before May 15, 1981. It is so ORDERED. dhm
May 1	75	Filed Deft's Motion for Enlargement of Time.
May 1	76	Filed Memorandum in Support of Defendant's Motion for Enlargement of Time. dhm
May 7	77	MOTION for Partial Summary Judgment by Defts'.
May 7	78	MEMORANDUM in Support of Motion for Partial Summary Judgment and in Opposition to Pltf's Motion for Partial Summary Judgment.
May 18	79	Filed Pltfs' Reply Brief to Deft's Motion for Partial Summary Judgment. rpd
May 15		ORDER—Deft's Motion for Enlargement of Time, P# 75, is Granted with Acquiescence by Letter of Pltf. Copy to Attys. rpd
June 8	80	Filed letter from Atty. Gulyassy stating counsel are in agreement to having P.67 Pltf's Motion for further summary judgment; and P.77 Defts' Motion for partial Summary Judgment, shall be heard on papers submitted. Deft. shall be filing addition supporting papers by June 16, 1981. lgl

DATE	NR.	PROCEEDINGS
1981		
Aug. 19	81	Filed Memorandum of Decision—1) the claimant offers new medical evidence or reports new medical treatment since his initial determination; 2) the claimant agrees to undergo a consultative examination when one is suggested by the defendant; 3) the claimant or his representative causes a delay by failing to provide information needed for reconsideration; 4) the claimant or his representative requests a delay; 5) the delay is in some other way attributable to the aggrieved claimant or his representative. The court will not, however, order payment of interim benefits to claimants who suffer delays of more than 90 days in the reconsideration process. The court will direct that judgment be entered after thirty days from the filing and service of a copy of this order on counsel of record. The parties may apply for leave to be heard on the settlement of the final judgment order. Cy to attys. lgl
Oct. 5		CALENDAR CALL before Judge Holden. Stipulation for final judgment forthcoming. lgl
Oct. 15	82	STIPULATION that proposed Judgment Order will implement the finding made by the court. Defts reserve their rights to appeal. gww
Oct. 30	83	JUDGMENT ORDER—that members of the pltf class are denied their statutory right to "reasonable notice and opportunity for a hearing," pursuant to 42 U.S.C. § 405(b), when the deft fails to provide prompt administrative reconsideration decisions and prompt administrative law judge hearings for those Title II disability insurance benefit claimants residing in the District of VT who request reconsideration and/or hearing be-

DATE	NR.	PROCEEDINGS
1981		
Oct. 30		fore an administrative law judge following adverse initial determinations by the deft that they are not disabled. IT IS FURTHER ORDERED AND ADJUDGED THAT:— all present and future VT residents seeking to secure SS Disability benefits who, following an initial determination by the deft that no disability exists, experienced an unreasonable delay in the scheduling of and/or issuance of decisions in reconsiderations and fair hearings. etc. 10. Within 60 days from the date of this order, the deft shall submit to the Court and to the pltf attys a detailed statement or plan for implementing the relief required herein on a continued basis and the actual administrative steps taken to effectuate aid plan. etc. 11. This Court shall retain continuing jurisdiction over this cause to insure compliance with the provisions of this Order for a period of no less than one year from the date hereof. Cy to attys.
Dec. 6	84	ORDER—The judgment order dated October 30, 1981 (P.83) is hereby vacated and the correct judgment order stipulated by the parties will be entered in lieu thereof. It is so ORDERED. Cy to attys.
Dec. 6	85	JUDGMENT ORDER. Cy to attys. lgl
Dec. 12	86	STIPULATION that defts may submit for filing revised case summaries and Declaration of Theodore S. Allen, previously designated Exhibit A to Deft's Motion for Partial Summary Judgment and NOTICE of Filing. P#77 and 78. rer
Dec. 12	87	DECLARATION of Theodore S. Allen with revised case summaries and Social Security Administration Evaluations attached. rer

DATE	NR.	PROCEEDINGS
1982		
Jan. 4	88	PLAN for implementing Court's Judgment (P#85) with Exhibit attached by Deft. rer
Jan. 5	89	NOTICE OF APPEAL by Govt. from Judgment Order entered 11/6/81.
Jan. 8		Mailed copy of Notice to Clerk Fusaro, Judge Holden, Court Reporter, and Attorneys of Record. cb

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 82-6009

LEON S. DAY

v.

RICHARD S. SCHWEIKER

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
01-12-82	Filed copy of district court docket entries & notice of appeal on behalf of Appellant Richard S. Schweiker
01-18-82	Order dismissing the appeal [without judicial action] by clerk's order filed
01-18-82	Issued certified copy of order dismissing the appeal, etc.
01-20-82	Appellant Schweiker motion for reinstatement of the appeal filed; Appellant Schweiker motion to filed Forms C & D out of time filed [w/pfs]
01-20-82	Appellant Schweiker Form C received [w/pfs]
01-20-82	Appellant Schweiker Form D received [w/pfs]
01-29-82	Order granted, Appellant Schweiker motion for reinstatement of the appeal filed; Order granted, Appellant Schweiker motion to file Forms C & D out of time filed [RJC, CJ] [endorsed on motion of 01-20-82]
01-29-82	Issued certified copy of order granting Appellant's motion for reinstatement, etc.
01-29-82	Appellant Schweiker Form C filed [w/pfs]
01-29-82	Appellant Schweiker Form D filed [w/pfs]

DATE	FILINGS—PROCEEDINGS
02-08-82	Receipt of certified copy of order dismissing appeal, etc. received
02-09-82	Scheduling Order #1 filed [PG: 02-19-82 at 10:00 AM]
02-17-82	Receipt of certified copy of order granting Appellant's motion for reinstatement, etc. received
02-22-82	Record on appeal filed [original papers of district court]
03-09-82	Appellant Schweiker motion for an extension of time to file brief and appendix filed [w/pfs]
03-12-82	Scheduling Order #2 filed [endorsed on motion of 03-09-82]
04-05-82	Appellant Schweiker brief filed [w/pfs] [by mail]
04-05-82	Appellant Schweiker appendix filed [w/pfs] [by mail]
04-28-82	Appellee Day, et al. brief filed [w/pfs] [by mail]
05-20-82	Appellant Schweiker reply brief, filed (w/pfs)

Leon S. Day v. Richard S. Schweiker

CASE TITLE

DOCKET NO. ▶ 82-6009

MR NUMBER ▶

TYPE OF CASE: [X] U.S. Civil [ ] Bankruptcy [ ] Criminal — [ ] Original proc. [ ] Private Civil [ ] Prisoner — [ ] Administrative — 2-242

DISTRICT COURT: [ ] Conn. [ ] EDNY [ ] NDNY [ ] NDNY [ ] SDNY [X] VT [ ] Other (specify) 2/9-1

▶ Forms	Date Filed
A	
B	
C	:01-29-82
D	:01-29-82
CJA 20	
CJA 23	
Other (specify)	

SAFE(S) PREARGUMENT CONFERENCE(S) HELD:

DOCKET FEE

DATE

ACCOUNT OF APPELLANT

RECEIVED: NO FEE REQUIRED

DISBURSED

NO FEE REQUIRED: [ ] FP [ ] 24a [ ] SC

DISTRICT COURT DATA:

DISTRICT DOCKET NO.: 78-266

DATE ACTION FILED IN DIST. COURT: 11-15-78

DATE OF DISTRICT COURT JUDGMENT: 11-06-81

DATE N.A. FILED: 01-05-82

DATE DOCKETED: 01-12-82

[ ] CROSS APPEAL OR [ ] CONSOLIDATED WITH DOCKET NOS:

▶ prior 81-6037

RECORD FILED (ORIGINAL DIST. COURT PAPERS): 02-22-82

(TRANSCRIPT(S)):

▶ SCHEDULING ORDERS

	SO 1	Adj SO 2	Adj SO 3	Adj SO 4	Adj SO 5
	DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED
	2-9-82	3-12-82			
Record	2-25-82				
Transcript					
BRIEFS: Appellant	3-12-82	4-02-82			
No.					
Appellee	4-5-82	4-26-82			
No.					
Argument (Week of)	4-12-82	5-10-82			

[ ] ADJ. SO, 6 ETC. OVER [ ] APPELLEE'S APPENDIX

FILING OF BRIEF, APPENDIX, ETC.

PAPER FILED	PARTY	DATE
B [10]	T	04-05-82
A [18]	T	04-05-82
B [11]	E	04-28-82
Rp. B	T	5/20/82
PETITION	T	8-11-82

▶ MOTIONS TO EXTEND TIME

	Date Filed	Order Entered
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Proceedings Held in Abeyance [ ] Reactivated [ ]

Issuance of Mandate Stayed [ ] Stay Vacated [ ]

▶ CALENDAR

Date Time Request Sent: 02-09-82

Date Disqualification Sent:

Date Certain Notices Sent (No. sent ____) 1 2 3 4 5 6 ____

Receipt of Day Certain Notices 1 2 3 4 5 6 [ ]

Date Set for Argument: 6/9/82, 10:30

Committed [ ]

Not Committed [ ]

ROR [ ]

Bail [ ]

▶ TERMINATION

Date Heard/Submitted: 6/9/82

Tape No.: 265-266

Date Judgment Filed: 6-28-82

Date Mandate Issued: 9-24-82

Date Bill of Costs Filed: 07-12-82

Date Statement of Costs Filed: 8-31-82

Petition for Rehearing Filed Date 8-11-82 — Granted [ ] Denied [X] Date 9-17-82

[ ] Additional Petitions for Rehearing-See Docket Entries

Petition for Certiorari Filed Date — Granted [ ] Denied [ ] Date

[ ] Additional Petitions for Certiorari-See Docket Entries

▶ METHOD OF DISPOSITION

[ ] WRITTEN OPINION (BY JUDGE)
[X] WRITTEN OPINION (PER CURIAM)
[ ] DECISION FROM THE BENCH
[ ] SUMMARY ORDER
[ ] COURT ORDER W/O OPINION
[ ] DEFAULT DISMISSAL (CAMP, CAEP, OTHER)
[ ] CONSENT DISMISSAL (RULE 33, CRIMINAL, OTHER)
[ ] D.I.S.(?) DISMISSAL
[ ] OTHER (SPECIFY)

Record Returned: 10-2-82

Receipt of Return of Records

Date Reopened: 1-20-83

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No.

LEON S. DAY, on behalf of himself and all others similarly situated, PLAINTIFF

vs.

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education and Welfare, DEFENDANT

AFFIDAVIT TO ACCOMPANY APPLICATION TO PROCEED IN FORMA PAUPERIS

I, Leon S. Day, being first duly sworn, depose and say that I am the plaintiff in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefore, I state that because of my poverty, I am unable to pay the costs at said proceeding; that I believe that I am entitled to redress; and that the issues I desire to litigate are set out in the attached Complaint.

I further swear that the statements I have made below relating to my ability to pay the filing fee, cost of service of process, and any other fees at said proceeding are true to the best of my knowledge, information and belief.

1. I am presently unemployed and have been since December 1975, when I earned about $900 dollars per month.

2. Within the last twelve months I have received no income from a business, profession, or other form of self-employment or in the form of rent payment, dividends, interest, or other similar sources.

3. Within the last twelve months I have received no income from grants, pensions, Social Security benefits, welfare, or other similar sources, except my General

Electric pension of $228.26 per month and my Veteran's Pension of $41.00 per month.

4. With the past twelve months my sole source of income has been the above-stated pensions. In addition, my wife has been working since August, 1978, earning $114.00 per week.

5. I own a total amount of $27.00 in cash, checking accounts, and savings accounts.

6. I own no real estate, stocks, bonds, notes, automobiles and other valuable property (excluding ordinary household furnishings and clothing), except for a 1964 Chevrolet with an approximate value of $50.00.

7. My wife, my 19 year old college daughter, my 16 year old daughter, and my 14 year old son are dependent upon me for their support.

8. My family presently has an outstanding fuel bill of $1181.93, and outstanding medical bills of $133.00.

9. All of the monthly income of my wife and myself goes to meet the basic monthly living expenses of our family.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

/s/ Leon S. Day
LEON S. DAY

STATE OF VERMONT
WINDSOR COUNTY, SS

Subscribed and sworn to before me this 13th day of November, 1978.

/s/ Illegible
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action 78-266

LEON S. DAY, on behalf of himself and all others similarly situated, PLAINTIFF

vs.

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education and Welfare, DEFENDANT

AMENDED COMPLAINT—CLASS ACTION

I. PRELIMINARY STATEMENT

1. This is a civil class action seeking declaratory and injunctive relief to compel agency action wrongfully withheld or delayed in regard to the scheduling of and/or issuance of decision in administrative reconsiderations and fair hearings following initial adverse determinations issued to individuals seeking to secure Social Security disability benefits under 42 U.S.C. §§ 401 et seq. Plaintiff seeks declaratory relief that the actions or failures to act of defendant violate the due process clause of the Fifth Amendment to the United States Constitution, Title II of the Social Security Act at 42 U.S.C. § 405(b), and the Administrative Procedure Act at 5 U.S.C. §§ 555 (b) and (e) and 706 (1). Plaintiff further seeks injunctive relief restraining defendant from continuing his present practice of failing to make reconsideration decisions, schedule fair hearings, and issue fair hearing decisions promptly and within a reasonable time after respective request is made therefor.

II. JURISDICTION

2. Jurisdiction is conferred upon the Court by 28 U.S.C. § 1361, as this is an action in the nature of mandamus to compel an officer or employee of the De-

partment of Health, Education and Welfare to perform a duty owed to plaintiff and the class he represents.

3. The Court also has jurisdiction under 28 U.S.C. § 1331(a), as this action arises under the Constitution and laws of the United States and is brought against an officer or employee of a United States agency in his official capacity.

4. Plaintiff's request for declaratory relief is brought pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

III. VENUE

5. Pursuant to 28 U.S.C. § 1391(e), venue in this case is proper in the District of Vermont, where the cause of action arose.

IV. PARTIES

6. Plaintiff Leon S. Day is a 53 year old citizen of the United States and a resident of the State of Vermont. He, his wife, and his three (3) minor children are seeking restoration of the Social Security disability benefits that were terminated by the defendant effective December, 1977.

7. Defendant Joseph A. Califano, Jr., is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. § 401, et seq., he is responsible for the administration of the program to provide benefits to disabled individuals under Title II of the Social Security Act.

V. STATEMENT OF FACTS

8. Plaintiff Leon S. Day was determined by the defendant's predecessor to be disabled in December, 1975. Plaintiff, his wife and children collected disability benefits under Title II of the Social Security Act until December 1977, when the defendant determined that plain-

tiff had ceased to be disabled. At that time, plaintiff's families' monthly Title II entitlement of approximately $675.00 was terminated.

9. Plaintiff formally filed a request for reconsideration on December 21, 1977, alleging that he continued to be disabled. A copy of his request is attached hereto and incorporated herein as Exhibit 1.

10. The defendant failed to make a reconsideration determination until June 6, 1978. A copy of the Notice of Reconsideration is attached hereto and incorporated herein as Exhibit 2.

11. Through his attorney, plaintiff requested a fair hearing of the reconsideration decision on June 14, 1978. A copy of the defendant's acknowledgement of this request is attached hereto and incorporated herein as Exhibit 3.

12. To date, plaintiff has not received a fair hearing despite repeated attempts to have one scheduled. On November 8, 1978, plaintiff's attorney telephoned the defendant's Bureau of Hearings and Appeals in Manchester, New Hampshire, and was told that no fair hearing date had been set for plaintiff and that all available November hearing dates had been otherwise assigned.

13. Plaintiff alleges that he has been continuously disabled since December, 1975, and that his family has thereby been continuously eligible for disability benefits. Yet since the loss of these benefits in December, 1977, plaintiff's family has been forced to move to a lower rental apartment, they have incurred large debts; plaintiff's wife has been forced to obtain a full-time job.

14. As a result of defendant's actions or failure to act, plaintiff and the members of his class have suffered and will continue to suffer irreparable injury from which there is no adequate remedy at law.

VI. CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Rule 23

(and especially Rule 23(b)(2)) of the Federal Rules of Civil Procedure. The class consists of all present and future Vermont residents seeking to secure Social Security disability benefits following an initial determination by the defendant that no disability exists, and who experience an unreasonable delay in the scheduling of and/or issuance of decisions in reconsiderations and fair hearings.

16. Plaintiff is unaware of the precise number of persons in the class, as the number fluctuates, but this information is within the knowledge of defendant. Plaintiff alleges that the class is so numerous that joinder of all members is impracticable, and he has initiated discovery to substantiate these beliefs.

17. The questions of law and fact applicable in the plaintiff's case are common to the class as a whole. The lack of prompt scheduling of administrative appellate processes affects all class members, as will a judicial determination that defendant's delays in the scheduling of and/or issuance of decision in reconsiderations and fair hearings for individuals seeking disability benefits violate the due process clause of the Fifth Amendment, the Social Security Act, or the Administration Procedure Act.

18. Plaintiff's claim is typical of the claims of his class in that all class members are similarly adversely affected by the defendant's unreasonable delays through the failure to be paid disability benefits.

19. Plaintiff will fairly and adequately protect the interest of the class in that more prompt administrative processes will expedite the payment of disability benefits to all class members. Plaintiff is aware of no conflicts of interest among class members, and alleges that his attorneys, who are experienced in Social Security litigation, are qualified to protect the interests of all members of the class.

20. The defendant has acted or refused to act on grounds generally applicable to the class, in that the ad-

ministrative appellate process is tortuous to all Title II disability claimants. Thus, appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole is appropriate.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

21. Under 42 U.S.C. § 423, the defendant must provide Title II disability benefits to eligible individuals.

22. When disability benefits are denied or terminated on the defendant's initial determination that an individual is not disabled, 20 C.F.R. §§ 404.909 et seq. allows the individual to obtain judicial review only after exhausting an administrative appellate route consisting of three stages: reconsideration, fair hearing, and Appeals Council review.

23. Under his own regulations, the defendant is not required to make a reconsideration decision within any time limitation following an individual's initial appeal of a determination that he is not disabled. Pursuant to 20 C.F.R. § 404.917, however, the individual cannot request a fair hearing until the defendant's reconsideration determination is made.

24. Under 42 U.S.C. § 405(b), the defendant is required to provide dissatisfied Title II disability claimants with "reasonable notice and opportunity for a hearing."

25. The defendant's delays in scheduling or processing of reconsideration determinations, fair hearings, and/or fair hearing decisions fails to provide plaintiff and his class with reasonable opportunity for a hearing, in violation of the Social Security Act at 42 U.S.C. § 405(b).

SECOND CAUSE OF ACTION

26. Plaintiff realleges paragraphs 21-23 as paragraph 26 of his Second Cause of Action.

27. Under 5 U.S.C. § 555(b) and (e), the defendant is required to conclude administrative appeals "within

a reasonable time," and to give "prompt notice" of decisions denying benefits. Under 5 U.S.C. § 706(1), a reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed."

28. The defendant's delays in scheduling or processing of reconsideration determinations, fair hearings, and/or fair hearing decisions cause administrative appeals not to be concluded within a reasonable time and fail to permit the rendering of prompt notice of decision to plaintiff and his class, in violation of the Administrative Procedure Act at 5 U.S.C. § 555(b) and (e).

THIRD CAUSE OF ACTION

29. Plaintiff realleges paragraphs 21-23 as paragraph 29 of his Third Cause of Action.

30. Under the Fifth Amendment to the U.S. Constitution, plaintiff and the members of his class are entitled not to be deprived of "property, without due process of law."

31. The defendant's delays in scheduling or processing of reconsideration determinations, fair hearings, and/or fair hearing decisions result in the deprivation to plaintiff and the members of his class of disability benefits to which they are lawfully entitled, in violation of the due process clause of the Fifth Amendment.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that the Court:

1. Enter an Order certifying this as a class action and naming plaintiff as a class representative;

2. Grant a temporary restraining order restraining defendant, his agents and employees, from continuing to fail to schedule a fair hearing, and order that said hearing be scheduled immediately, and that a hearing decision be rendered promptly thereafter;

3. Grant a preliminary and permanent injunction enjoining defendant, his agents and employees, from delay-

ing in the making of reconsideration determinations, scheduling of fair hearings, and/or issuing of fair hearing decisions for plaintiff and the class he represents, and ordering that all such administrative appellate actions be accomplished within such reasonable time as the Court may determine to be consistent with the due process clause of the Fifth Amendment, the Social Security Act, and the Administrative Proceduce Act;

4. Declare that the defendant's actions in delaying the making of reconsideration decisions, the scheduling a fair hearings, and/or the issuing of fair hearing decisions within a reasonable time for plaintiff and the class he represents violate the due process clause of the Fifth Amendment, the Social Security Act, and the Administrative Procedure Act; and

5. Award plaintiff his costs and dispursements herein, his reasonable attorney's fees, and such other relief as the Court may deem to be equitable, just and proper.

I have read the above and know this to be true.

/s/ Leon S. Day
LEON S. DAY

/s/ Richard H. Munzing, Esq.
RICHARD H. MUNZING, Esq.
Vermont Legal Aid, Inc.
3 Summer Street
Springfield, Vermont 05156

STATE OF VERMONT
WINDSOR COUNTY, SS

At Springfield, in said County of Windsor, this 21st day of November, 1978, personally appeared the above-named Leon S. Day and made oath to the truth of the allegations of the foregoing Complaint.

Before me,

/s/ Donna M. Benton
Notary Public

EXHIBIT 2

SOCIAL SECURITY
NOTICE OF RECONSIDERATION

From: Department of Health, Education, and Welfare
Social Security Administration

Date: Jun 06 1978
Your Claim Number:
008-16-8830

Mr. Leon S. Day
32 Main Street
Ludlow, Vermont 05149

Dear Mr. Day:

In view of your request for reconsideration, all the information about your claim has been carefully evaluated. It has been determined that the previous decision was proper under the law.

A period of disability was established for you beginning December 1975 because of the effects of a stroke. The law provides that an individual's disability period shall end if a person is able to do substantial gainful work. The law also provides that an individual will receive benefit payments for the month disability ends and the following two months. The medical evidence in your case shows that you became able to do substantial gainful work in September 1977.

On reconsideration, all the evidence was reviewed, including the additional evidence submitted and no other condition was disclosed that would prevent you from working.

Your records show you are 52 years of age, have completed 10 years of school and have experience as a toolmaker for airplane motors. The evidence establishes that by September 1977 you became able to do substantial gainful work. Therefore, the determination ending your period of disability and disability benefits to you and

your family with the month of November 1977 has been affirmed.

If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Bureau of Hearings and Appeals. If you want a hearing, you must request it not later than 60 days from the date you receive this notice. You may make your request through any social security office. Read the enclosed leaflet FHA-1 for a full explanation of your right to appeal:

ISSUED BY: Bureau of Disability Insurance
Division of Reconsideration

SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

EXHIBIT 3

REQUEST FOR HEARING

Take or M[illegible]riginal and all copies to your local Socia[illegible]curity Office.

CLAIMANT'S NAME: Leon Day

WAGE EARNER'S NAME (If name shown if same as above)

SOCIAL SECURITY NUMBER: 008-16-8830

SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete ONLY if Supplemental Security Income Case)

CLAIM FOR (Check one or more boxes) (Circle type of claim)

- [X] Establishment to Disability Benefits — DIB DWB CDB
- [ ] Continuance of Disability Benefits — DIB DWB CDB
- [ ] Supplemental Security Income — Aged Blind Disabled
- [ ] Continuance of Supplemental Security Income — Aged Blind Disabled
- [ ] Other (Specify) _____

I disagree with the determination made on the above claim and request a hearing. My reasons for disagreement are:

see attached letter dated 6/11/78.

Check one of the following:

- [ ] I have additional evidence to submit (Attach such evidence to this form or forward to the Social Security Office within 10 days.)
- [ ] I have no additional evidence to submit.

Check ONLY ONE of the statements below:

- [ ] I wish to appear in person.
- [ ] I waive my right to appear and give evidence, and hereby request a decision on the evidence on file.

Signed by: (Either the claimant or representative should sign. Enter addresses for both. If claimant's representative is not an attorney, complete Form SSA-1696.)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE	CLAIMANT'S SIGNATURE
Richard Kargler ☐ ATTORNEY ☐ NON-ATTORNEY	Leon Day
ADDRESS: 3 Summer St.	ADDRESS: 32 Main St.
CITY, STATE, AND ZIP CODE: Springfield, Vt. 05156	CITY, STATE, AND ZIP CODE: Ludlow, Vt. 05149
TELEPHONE NUMBER: ( )	DATE: 6/11/78 (Do not sign above this line)
	TELEPHONE NUMBER

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

Is this request timely filed? [X] YES [ ] NO

If "No" is checked: (1) Attach claimant's explanation for delay, (2) Attach any pertinent letter, material, or information in the Social Security Office.

ACKNOWLEDGMENT OF REQUEST FOR HEARING

Your request for a hearing was filed on 6/11/78 at Rutland, Vt. 05701

The Administrative Law Judge or the Hearing Examiner, SSI, will notify you of the time and place of the hearing at least 10 days prior to the date which will be set for the hearing.

[illegible]

For the Social Security Administration

By: _____ (Signature) (Title)

362 S. Main St.
(Street Address)

Rutland, Vt. 05701
(City) (State) (Zip Code)

525

Form HA-501
(2/78)

REPRESENTATIVE

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. ————

LEON S. DAY, on behalf of himself and
all others similarly situated, PLAINTIFFS

v.

JOSEPH A. CALIFANO, Secretary of the Department of
Health, Education, and Welfare, DEFENDANT

MOTION OF AMEDIE MAURAIS TO INTERVENE AS PARTY PLAINTIFF

Now comes Amedie Maurais and moves this Honorable Court, pursuant to Rule 24 F.R.C.P., for leave to intervene as a party plaintiff in the above-entitled action. In support of this motion, plaintiff states as follows:

1. Plaintiff incorporates in this motion the allegations contained in his verified complaint, filed in this court simultaneously with this motion;

2. Plaintiff should be permitted to intervene pursuant to Rule 24(b), inasmuch as plaintiff's legal claims and the legal claims presented in this cause of action are identical, i.e. whether defendant's practice of failing to make reconsideration decisions, schedule fair hearings, and issue fair hearing decisions promptly and within a reasonable time after respective requests therefor violates the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, or the Social Security Act;

3. Intervention will serve the essential ends of justice and judicial economy.

Dated at St. Johnsbury, Vermont, this 30th day of November, 1978.

AMEDIE MAURAIS
By: /s/ Ronald K. Lospennato
RONALD K. LOSPENNATO, ESQ.
His Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. ————

LEON S. DAY, on behalf of himself and all others similarly situated, PLAINTIFF,
AMEDIE MAURAIS, INTERVENOR PLAINTIFF

v.

JOSEPH A. CALIFANO, Secretary of the Department of Health, Education, and Welfare, DEFENDANT

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Rule 24(b) permits intervention when the applicant's claim and the main action have a question of law or fact in common. In this case, the applicant's legal claims are identical to the claim of the plaintiff. Intervenor Maurais is also challenging the defendant's practice of failing to make reconsideration decisions, schedule fair hearings, and issue fair hearing decisions promptly and within a reasonable time after respective request is made therefor as violative of the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, and the Social Security Act.

Since the legal claims are identical, intervention should be allowed. *Epstein* v. *Weiss*, 50 FRD 387 (D. La. 1970); *Berley* v. *Dreyfus & Co.*, 43 FRD 397 (D. N.Y. 1967). Generally, intervention will be allowed where common questions of law are present, unless it is determined that intervention will unduly delay or prejudice the rights of the original parties. *Moore* v. *Jungipahoa Parish School Bd.*, 298 F. Supp. 288 (D. La. 1969); *Shipley* v. *Pittsburgh & L.E.R. Co.*, 70 F. Supp. 870 (D. Pa. 1947); *Degge* v. *City of Boulder, Colo.*, 336 F2d 220 (C.A. Colo. 1966); *Archer* v. *U.S.*, 268 F2d 687 (C.A. Utah, 1959); *Carrol* v. *American Federation of Musicians*, 33 FRD

353 (D.C. N.Y. 1963). Since intervention here would not unduly delay or prejudice the rights of the original parties, the application should be granted. This is especially true since the underlying purpose of this rule was to prevent a multiplicity of lawsuits where common questions of law or fact are involved, *Reich* v. *Webb*, 336 F2d 153 (C.A. Cal. 1964) cert den 380 US 915, and if intervention were not allowed here the result would simply be the institution of another lawsuit with identical legal claims as the present one.

Dated at St. Johnsbury, Vermont, this 30th day of November, 1978.

/s/ Ronald K. Lospennato
RONALD K. LOSPENNATO, ESQ.
Vermont Legal Aid, Inc.
55 Main Street
St. Johnsbury, Vermont
Attorneys for Intervening Plaintiff

CERTIFICATE OF SERVICE

I, Ronald K. Lospennato, hereby certify that I served a copy of the foregoing Memorandum on the following, by mailing a copy thereof, first class mail, proper postage affixed, to the following address:

William Gray, Esq.
U.S. Attorney
Rutland, Vermont 05701

/s/ Ronald K. Lospennato
RONALD K. LOSPENNATO, ESQ.
Vermont Legal Aid, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. ————

LEON S. DAY, on behalf of himself and all others similarly situated, PLAINTIFF

vs.

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education, and Welfare, DEFENDANT

VERIFIED COMPLAINT OF INTERVENOR PLAINTIFF AMEDIE MAURAIS

I. PRELIMINARY STATEMENT

1. Intervenor Maurais incorporates by reference paragraph one of the above-entitled complaint.

II. JURISDICTION

2. Intervenor Maurais incorporates by reference paragraphs two, three, and four of the above-entitled complaint.

III. VENUE

3. Intervenor Maurais incorporates by reference paragraph five of the above-entitled complaint.

IV. PARTIES

4. Intervenor Maurais is a 51 year old citizen of the United States and a resident of the State of Vermont. He, his wife, and only child are seeking the restoration of the Social Security Disability benefits that were terminated by the defendant effective November, 1977. His Social Security Number is 003-18-4824.

5. Intervenor Maurais incorporates by reference paragraphs six and seven of the above-entitled complaint.

V. STATEMENT OF FACTS

6. Intervenor Maurais was determined by the defendant's predecessor to be disabled in June, 1976. Plaintiff, his wife, and child collected disability benefits under Title II of the Social Security Act until April 1977 when the defendant notified Intervenor in two separate letters that he had ceased to be disabled effective November, 1977 and that he had been overpayed a total of $2,242.40. Intervenor did not receive before April 1978 notice that his families Title II benefits were being terminated. The last Social Security Disability check he received was in March, 1978.

7. Intervenor Maurais through his attorney filed a request for reconsideration on June 2, 1978, alleging that he continued to be disabled and that, in any event, his overpayment should be waived. A copy of his request is attached hereto and incorporated herein as Exhibit 4.

8. As of this date defendant has failed to make a reconsideration determination.

9. Through his attorney, Intervenor has repeatedly requested a decision on his request for reconsideration, but to no avail. On or about November 14, 1978 Intervenor's attorney was told by Blaine Kinsey of the Montpelier office of the Social Security Administration that Intervenor's file had been forwarded to Baltimore and there was no indication when a decision would be forthcoming.

10. Intervenor alleges that he has been continually disabled since June, 1976, and that his family has thereby been continuously eligible for disability benefits. Yet, since the end of these benefits in April, 1977, plaintiff's family has had to go into substantial debt to maintain payment and expenses for their home, have had difficulty in purchasing prescription drugs, and have been unable to repair their 1969 Pickup Truck.

11. Intervenor Maurais incorporates by reference paragraphs eight through fourteen inclusive of the above-entitled complaint.

VI. CLASS ACTION ALLEGATIONS

12. Intervenor Maurais incorporates by reference paragraphs fifteen through twenty inclusive of the above-entitled complaint.

VII. CAUSES OF ACTION

13. Intervenor Maurais incorporates by reference paragraphs twenty-one through thirty-one inclusive of the above-entitled complaint.

VIII. PRAYER FOR RELIEF

14. Intervenor Maurais incorporates by reference paragraphs one through five inclusive of the Prayer for Relief in the above-entitled complaint.

I have read the above and know those allegations pertaining to me personally to be true.

/s/ Amedie Maurais
AMEDIE MAURAIS

/s/ Ronald K. Lospennato
RONALD K. LOSPENNATO, ESQ.
Vermont Legal Aid, Inc.
55 Main Street
St. Johnsbury, Vermont

STATE OF VERMONT
CALEDONIA COUNTY, SS

At St. Johnsbury, in said County of Caledonia, this 30th day of November, 1978, personally appeared the above-named Amedie Maurais and made oath to the truth of the allegations of the foregoing complaint.

Before me,

/s/ [Illegible]
Notary Public

June 2, 1978

55 Main Street
St. Johnsbury, Vt.

Social Security Administration
Box 338
Montpelier, VT 05602

RE: Amedie Maurais; SSN 003-18-4824

Dear People:

I am representing the above-named Amedie Maurais and am writing to request reconsideration in regard to the Notice of Overpayment he just received.

This case is complicated by the fact that Mr. Maurais was receiving Social Security disability benefits and the overpayment he just received dated April 14, 1978 states that he was overpaid benefits since November, 1977. Mr. Maurais states that he never received a notice from the Social Security Administration informing him that his benefits were terminated and the first notice he got from Social Security was the overpayment notice.

He had received a letter dated September 13, 1977 from the Disability Determination Agency to which he replied by letter dated September 24, 1977. He states that the next notice he got was the overpayment notice.

Thus Mr. Maurais disputes the fact that he is no longer disabled and would request reconsideration on that issue. If he did not receive any prior notice from Social Security informing him that his benefits were being terminated it would appear clear that he should be entitled at this point to request reconsideration on the issue of disability. If there [sic] were to be done the overpayment issue should be held in abeyance until a final determination is made on the question of the disability appeal. Thus this request for reconsideration should be treated as a request for reconsideration as to the issue of whether Mr. Maurais is still disabled.

If in fact it is finally determined that he is no longer disabled he would also request reconsideration or waiver on the overpayment issue as noted above. The overpayment was not his fault in any way and he accepted the payments because he thought they were correctly paid to him in that he had not received any prior notice of termination from Social Security. He also could not meet his current living expenses if he had to pay back the overpayment.

As per my telephone conversation with your office I would appreciate it if you would notify me as soon as you get more information as to whether there is in your file a preceding termination notice. I would request that the overpayment issue be held in abeyance until it is determined whether he received a prior notice of overpayment and the actual disability decision be treated first.

In that regard I would appreciate it if you could send to me copies of any of the medical information that is in his file as soon as you receive it. I enclose a medical information release that would authorize you to send this information to me. Thank you.

Sincerely,

Zander B. Rubin
Staff Attorney

ZBR/kdc

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education and Welfare, DEFENDANT

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

Now comes the defendant, Secretary of the Department of Health, Education and Welfare, by his attorneys, and pursuant to Rule 33 of the Federal Rules of Civil Procedures hereby answers Plaintiff's Interrogatories.

The term "straight Title II" as used in these answers excludes all concurrent Title II - Title XVI claims. All answers, unless stated otherwise, are restricted to information concerning Vermont claimants. The following abbreviations will be used:

BDI—The Bureau of Disability Insurance

BHA—Bureau of Hearings and Appeals

DDA—The Vermont Disability Determination Agency (the state agency which, by contract, makes disability determinations on behalf of the Secretary of Health, Education and Welfare for Vermont claimants)

INTERROGATORY NO. 1:

Please state the full name(s) and address(es) of the person(s) answering. If more than one person answers, the name of each should be specified as part of the response to each question or part of a question. If an an-

swer is the combined response of more than one person, indicate the name of each who contributes information to that answer.

ANSWER:

The interrogatories pertaining to initial and reconsideration determinations are answered by:

Robert C. Green
Regional Commissioner, Boston Region
Social Security Administration
John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

To assist Mr. Green in his formulation of answers to these Interrogatories, the following individuals compiled information for his use:

Thomas D. Murphy
Social Insurance Operations Specialist
Disability Insurance, Boston Region
Social Security Administration
John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

Laurie Schoendorfer
Operations Branch Chief
Division of Operations Support
Office of the Regional Commissioner, Boston Region
Social Security Administration
John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

The interrogatories pertaining to the hearing level of appeal are answered by:

Harold H. Fischer
Regional Chief Administrative Law Judge,
Boston Region
Bureau of Hearings and Appeals
Social Security Administration

John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

To assist Judge Fischer in his formulation of answers to these Interrogatories, the following individuals compiled information for his use:

Thomas J. Morrissey
Management Analyst
Bureau of Hearings and Appeals, Boston Region
Social Security Administration
John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

Darlene Wichterman
Program Management Officer
Bureau of Hearings and Appeals, Boston Region
Social Security Administration
John Fitzgerald Kennedy Federal Building
Boston, Massachusetts 02203

Rita McLaughlin
Administrative Officer, Manchester Hearing Office
Bureau of Hearings and Appeals, Boston Region
Social Security Administration
275 Chestnut Street
Manchester, New Hampshire

INTERROGATORY NO. 2:

Please state your office, title, and relationship to the defendant. If you are an agent of the defendant, please so state and indicate any limitation upon the scope of your agency.

ANSWER:

Please see certifications attached to these answers.

Interrogatories 3-10 are answered by Mr. Green. The answers to Interrogatories 3-8 are based on figures from October 1, 1976 to November 30, 1978 since existing records for the period from July 1,

1976 to October 1, 1976 do not separately identify straight Title II claims. The answers are not readily available in the form requested; the figures, therefore, represent information accurate to the best of defendant's knowledge.

INTERROGATORY NO. 3:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have filed claims for straight Title II diasibility benefits in Vermont.

ANSWER:

From October 1, 1976 to November 30, 1978, 3,588 persons in Vermont have filed claims for straight Title II disability benefits that required a medical/vocational determination.

INTERROGATORY NO. 4:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have had initial determinations resulting in an award of straight Title II disability benefits, and state the total number of persons in Vermont who have had initial determinations denying straight Title II disability claims.

ANSWER:

From October 1, 1976 to November 30, 1978, 1,914 initial DDA determinations resulted in an allowance of straight Title II disability benefits, and 1,674 initial DDA determinations denied straight Title II disability claims in Vermont.

INTERROGATORY NO. 5:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have had straight

Title II disability benefits suspended or terminated on the basis of an initial determination that they have ceased to be disabled.

ANSWER:

From October 1, 1976 to November 30, 1978, of 364 continuing disability investigations of straight Title II beneficiaries, 143 initial DDA determinations were made that disability had ceased.

INTERROGATORY NO. 6:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have requested reconsideration of any adverse straight Title II initial determinations holding that a disability did not or had ceased to exist.

ANSWER:

From October 1, 1976 to November 30, 1978, 642 persons in Vermont have requested reconsideration of initial DDA determinations of a denial or cessation of straight Title II disability.

INTERROGATORY NO. 7:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have received reconsiderations approving straight Title II disability claims, and those who have had reconsiderations denying said claims.

ANSWER:

From October 1, 1976 to November 30, 1978, 137 requests for reconsiderations resulted in reversals to allowance or continuance and 505 resulted in affirmations of denial or cessation.

INTERROGATORY NO. 8:

For the period July 1, 1976 to the present, please give a month by month breakdown of the following information relating to straight Title II disability claims:

a. Number of claims filed

b. Number of favorable initial determinations

c. Number of unfavorable initial determinations

d. Number of initial determinations that a disability had ceased to exist

e. Number of favorable reconsideration determinations

f. Number of unfavorable reconsideration determinations

ANSWER:

See Attachment A.

INTERROGATORY NO. 9:

For the period of July 1, 1976 to the present, for each reconsideration of an adverse straight Title II disability initial determination made to date, please give the date of the request for reconsideration and the date the reconsideration determination was made.

ANSWER:

The information necessary to answer this Interrogatory is not readily available in the form requested. Defendant will provide, within three weeks after service of these Answers, a case-by-case breakdown for the period September-November, 1978 showing the date each straight Title II disability reconsideration case was received and released by DDA. The date of reconsideration determination would precede or coincide with the date of release. (See also footnote 1, page 6).

To provide the best possible answer available at this time, defendant herewith provides the average DDA processing times for the period January-November, 1978. These figures represent the time span between the date of receipt of the case and the date DDA completes its action and releases the case.[1]

Month	Mean Title II Reconsideration Processing Time
January 1978	17.4 days
February 1978	16.7 days
March 1978	28.4 days
April 1978	24.7 days
May 1978	24.7 days
June 1978	37.6 days
July 1978	51.7 days
August 1978	41.2 days
September 1978	48.6 days
October 1978	32.7 days
November 1978	48.2 days

Defendant's Objection To Interrogatory 9

Defendant objects to providing a further answer to Interrogatory 9 for the period July, 1976 to the present on the grounds that it is unduly burdensome to answer, overly broad in scope, and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 10:

Please describe the present administrative process that ensues from the date a straight Title II disability reconsideration is requested until the date the reconsideration determination is made.

ANSWER:

When a reconsideration of a Title II disability determination denying or ceasing benefits is requested, the following events occur:

---

[1] After DDA's actions are completed, some cases are sent to BDI in Baltimore for further action. See Answer to Interrogatory 10. BDI's processing times are not presently available.

The Social Security District Office, where the SSA-561 request for reconsideration (sample attached), is filed, will return the disability folder to the State DDA. If the disability folder is not in the District Office's possession at the time that the request is filed, steps will be taken to obtain the folder and route it to the DDA.

DDA will review the disability folder, relying on medical evidence previously obtained, additional medical evidence obtained as cited by the claimant on the request for reconsideration, and if indicated by the above, a purchased consultative examination, that is, one ordered and paid for by DDA, to document the folder more fully.

When all the evidence which is deemed necessary is on file, a decision is made either affirming the denial or cessation of benefits or reversing the prior decision, allowing or continuing benefits. From this point, initial denials and cessations are handled differently.

A. *Reconsideration of initial denials.* The disability folder is routed to the District Office after DDA action which releases the notice and generation of payment, if any will be forthcoming. The exception to this would be those unusual cases sent to BDI requiring special handling or random cases selected by computer for sample review (10% of all reconsiderations of initial denials).

Those cases which are selected for sample review are routed to BDI in Baltimore after the DDA has completed its processing of those cases. Some cases are returned to the DDA for additional development or, possibly, with a recommendation to change the determination. In these cases the DDA will usually comply with BDI's request, taking the necessary action, and then return the folder to BDI for release of the notice to the claimant and any necessary payment action.

B. *Reconsideration of Cessation of disability.* All these cases are routed to BDI in Baltimore after the DDA has made its determination. Prior to October 1978, all such reconsideration determinations were reviewed by BDI. Currently, all DDA reconsideration determinations re-

versing Title II disability cessation are still reviewed by BDI. As of October 1978, however, none of the DDA reconsideration decisions affirming Title II disability cessations are reviewed by BDI; these files are now sent to BDI in Baltimore only for mailing of the notice to the claimant.

Interrogatories 11-27 are answered by Judge Fischer, with Mr. Green also answering part of Interrogatories 15, 23 and 25. The figures provided in the following answers to Interrogatories 11-14 cover the period January 1, 1977 to December 15, 1978. Earlier records had been purged from the Hearing Office files.

INTERROGATORY NO. 11:

From July 1, 1976 to the present, please state the total number of persons in Vermont who have requested fair hearings following adverse reconsideration determinations upon straight Title II disability claims.

ANSWER:

From January 1977 to December 15, 1978, 342 persons in Vermont requested fair hearings following adverse reconsideration determinations upon straight Title II disability claims.

INTERROGATORY NO. 12:

From July 1, 1976 to the present, please give a month by month breakdown as to how many straight Title II diasbility fair hearing requests have been filed.

ANSWER:

See Attachment B.

INTERROGATORY NO. 13:

From July 1, 1976 to the present, please state how many fair hearings have been held on straight Title II disability claims.

ANSWER:

From January 1977, to December 15, 1978, 233 fair hearings have been held on straight Title II disability claims.

INTERROGATORY NO. 14:

From July 1, 1976 to the present, please give the date of request of each straight Title II disability fair hearing, the date of the hearing, and the date of the hearing decision.

ANSWER:

See Attachment C.

INTERROGATORY NO. 15:

Please describe the present administrative process that occurs from the date a straight Title II disability hearing request is received until the date of the hearing decision.

ANSWER:

The following description is provided by Mr. Green:

Requests for hearings are generally received at the Social Security District Office. If the District Office receives a written request which is not on the prescribed Form SSA-501 (see attached), it will complete the form and send it to the claimant for his signature. The District Office will also, on the same date of receipt, send the written request and a copy of the unsigned SSA-501

to the appropriate Hearing Office. (For Vermont claimants, the Hearing Office is located in Manchester, New Hampshire).

If the disability folder is in the possession of the District Office, it is sent to the Hearing Office along with the request for hearing. If the District Office does not have the disability folder, it will make a folder location query, teletype to the location (which usually is BDI in Baltimore) and request that the folder be sent to the District Office. When the folder is received by the District Office, it is forwarded to the Hearing Office.

The following description is provided by Judge Fischer:

When the request for hearing (SSA-501) is received by the Hearing Office with the claim file, the case is assigned to an administrative law judge. If the claim file is not received with the request for hearing, the District Office is notified and requested to locate the claims file.

When the case is assigned to an administrative law judge, the following pre-hearing development takes place: case controls are established; exhibits are identified and pulled; an exhibit list is prepared; the need for any additional pre-hearing development is identified; if consultation from a medical advisor (MA) or vocational expert (VE) is necessary, arrangements are made for the MA or VE to appear at the hearing; and an opening statement (chronological history of the case) is prepared.

The case is then scheduled for hearing and a notice of hearing is sent to all parties; the case control is updated.

If the administrative law judge determines that, during the course of either the hearing or post-hearing review, additional evidence is required to decide the case, then post-hearing development is initiated.

After the additional evidence is received, the decision is issued and the case control is updated.

INTERROGATORY NO. 16:

Please state how many persons are presently employed to hear straight Title II disability fair hearings in Vermont.

ANSWER:

Three administrative law judges assigned to the Manchester, N.H. Hearing Office hear straight Title II disability hearings in Vermont.

INTERROGATORY NO. 17:

Please state how many persons are presently needed to hear straight Title II disability fair hearings in Vermont.

ANSWER:

Three administrative law judges are needed to hear straight Title II disability hearings in Vermont.

INTERROGATORY NO. 18:

Please state whether Vermont fair hearing officers hear cases other than straight Title II disability cases. List all types of cases they hear.

ANSWER:

Vermont hearing officers hear, in addition to straight Title II disability cases, the following cases: Retirement/Survivors Insurance; Widow/Widower Disability Insurance; Health Insurance—Part A; SSI/Aged, SSI/Blind, SSI/Disability—concurrent with a Title II claim; Health Maintenance Organization; Provider Reimbursement Review Board; Professional Services Review Organization; Supplemental Medical Insurance Benefits; and Miscellaneous (non-Social Security matters).

INTERROGATORY NO. 19:

Please state the relationship and procedural differences, if any, between the scheduling of straight Title II disability hearings and the scheduling of Title XVI or concurrent Title II—Title XVI disability hearings in Vermont.

ANSWER:

Regional policy is that there are no procedural differences. Priorities in the scheduling of straight Title II disability hearings and the scheduling of Title XVI or concurrent Title II/XVI disability hearings are the same. Since January 1978 we have been attempting to schedule and hold all hearings within 90 days from the date of filing of the request for hearing. (See Answer to Interrogatory 24).

INTERROGATORY NO. 20:

Please explain the basis or standard procedure that exists for the scheduling of straight Title II disability hearings in Vermont and the assignments to individual hearing officers.

ANSWER:

All Vermont cases are assigned (in order of receipt) to the three administrative law judges in the Manchester Hearing Office. This assignment is done on a rotating basis for the three judges (the first case received is assigned to ALJ number one, the second case received is assigned to ALJ number two, etc.) Each ALJ arranges his or her own trip schedules (usually for a period of two months in advance). After a case is assigned to an ALJ, the hearing assigned to that ALJ will identify all cases to be heard at a particular hearing site so that these cases can be scheduled in the ALJ's next trip to that site.

INTERROGATORY NO. 21:

Please state any limitations or numerical ceilings upon the assignments of straight Title II disability hearings to hearing officers in Vermont.

ANSWER:

There are no limitations or numerical ceilings—individual dockets are monitored to maintain an average total number of cases equal to four months workload based on each judge's average production.

INTERROGATORY NO. 22:

If any emergency procedures exist to obtain additional hearing officers to hear straight Title II disability cases in Vermont, please describe these procedures, and when they are initiated.

ANSWER:

Intra- and inter-regional case transfers can be made if additional judges are needed and are available to handle the workload. Close monitoring of all dockets is maintained to alert us to the need for such workload adjusting procedures.

INTERROGATORY NO. 23:

Please estimate whether the average time in making straight Title II disability reconsiderations and scheduling hearings will change in the remainder of FY 1979 or in FY 1980. If so, explain why.

ANSWER:

(Answered by Mr. Green) The Social Security Administration's Boston Regional Office is constantly working to improve all DDA processing times, and we hope that these efforts will lead to a decrease in the Title II

reconsideration processing time during FY 79 and FY 80. However, these processing times can only be improved with the cooperation of claimants and all medical sources cited by the claimant. That is, unless all the information required to adjudicate a claim is forthcoming promptly when requested, the case will inevitably be delayed.

(Answered by Judge Fischer) We do not expect the average time for scheduling hearings to change in the remainder of FY 79 or in FY 80 as all cases will be treated in the same basis of priority.

INTERROGATORY NO. 24:

Please state why straight Title II disability cases cannot be scheduled within the same 90 day time span as presently is the case with Title XVI disability cases in Vermont.

ANSWER:

Our regional policy is to schedule and hold hearings on all claim types within a 90 day time span. However, this may not be possible in all cases because of logistical and scheduling problems due to distant travel. In the event that scheduling a Title II hearing within 90 days would interfere with the ability to meet the court order regarding Title XVI disability, the Title XVI case would have to be given priority. Also, we assist claimants in obtaining complex and specialized medical development; holding a hearing before such development is completed may be adverse to the best interest of the claimant and therefore some cases may not for that reason be scheduled within 90 days. In some cases completion of medical development has enabled an administrative law judge to determine that an applicant is disabled prior to holding a hearing.

INTERROGATORY NO. 25:

From July 1, 1976 to the present, please give the reversal rate of adverse straight Title II disability deci-

sions at both the reconsideration and fair hearing levels for Vermont, the region, and nationally.

ANSWER:

(Answered by Mr. Green) The DDA Title II reconsideration reversal rates from October 1, 1976 through November 30, 1978 are as follows:

Vermont DDA	21.3%
Boston Region	25.4%
Nation	22.6%

(Answered by Judge Fischer) The reversal rate at the fair hearing level for straight Title II disability decisions, from June 20, 1976 to December 15, 1978, is 56.2% for Vermont. The regional and national reversal rates, from June 20, 1976 to November 30, 1978, are 55.1% and 56.1% respectively.

INTERROGATORY NO. 26:

Please state if any new regulations are being considered to hasten the present administrative process in making or scheduling straight Title II disability reconsiderations or hearings. Please elaborate.

ANSWER:

Although no new regulations have yet been proposed, the Social Security Administration has begun consideration, at a very preliminary stage, of the feasibility of setting specific time frames for hearing cases and deciding appeals. However, some preliminary regional studies on the effects of the court-ordered time limitations in Maine indicate that adhering to strict time frames may have resulted in a marked increase in court-ordered remands, as well as in claimant's requests for postponements, and thus may have adversely affected some claimants.

INTERROGATORY NO. 27:

Please state or estimate when plaintiff Leon S. Day's fair hearing will be held.

ANSWER:

Leon Day's hearing was held on December 4, 1978.

INTERROGATORY NO. 28:

For plaintiff Leon S. Day, please describe what actions led to the determination that he had ceased to be disabled in the latter part of 1977.

ANSWER:

(Answered by Mr. Green) On September 3, 1976 the Vermont Disability Determination Agency determined that Leon S. Day was entitled to Title II disability benefits based on disability beginning December 5, 1975. Because Mr. Day's impairment was considered capable of improvement, a medical reexamination date of June, 1977, was noted. Pursuant to this notice, the Vermont DDA received the disability folder on August 15, 1977.

On August 17, 1977 a letter was sent to the beneficiary advising that a continuing disability investigation was to be conducted and requesting completion of the enclosed Form SSA-454a, Social Security Disabled Person Report (see attached).

On August 25, 1977 the completed SSA-454a was received from the beneficiary. The form stated that there had been no improvement in the impairment which had rendered the beneficiary disabled. Several sources of current medical evidence were cited.

After obtaining medical evidence of record (*i.e.*, from sources cited by claimant) from Dr. Satish Chawla, the Veteran's Administration Hospital at White River Junction, and the Springfield Hospital; and a purchased psychiatric consultative examination from Dr. Harold Rob-

bins, DDA advised the beneficiary of the proposed cessation by letter on October 4, 1977. DDA determined on October 17, 1977 that disability had ceased as of September, 1977 and benefits would be terminated as of November, 1977.

On October 21, 1977 the disability folder was then routed to the Bureau of Disability Insurance in Baltimore where it was received by the BDI, Division of Benefit Services on October 26, 1977.

On November 14, 1977 a letter was sent to the beneficiary advising him of the determination that disability had ceased as of September, 1977 and that benefits would terminate effective November, 1977.

INTERROGATORY NO. 29:

For plaintiff Leon S. Day, please describe all actions taken between the request for reconsideration and the holding of the fair hearing. This should include, but not be limited to transmission of files (to, from, where, when); development of case (what was done, where, when, how); gathering or attempts to gather additional medical evidence (when, where, how); and any other relevant actions.

ANSWER:

The following events, reported by Mr. Green, occurred in the case of Leon S. Day from the time of his request for reconsideration to the time of his request for a hearing:

On December 22, 1977 Leon S. Day filed a request for reconsideration, SSA-561, asking that the determination that disability had ceased be reviewed. The Social Security District Office in Rutland, on that same day, sent a teletype to the Bureau of Disability Insurance (BDI) in Baltimore requesting that the disability folder be sent to DDA immediately so that the reconsideration process could continue.

On January 25, 1978 the folder was received by the Vermont Disability Determination Agency (DDA).

On January 26, 1978 a determination upholding the cessation was made by the Vermont DDA.

On January 27, 1978 the folder was sent to BDI in Baltimore for review and release of notification to the claimant.

On January 31, 1978 the folder was received by BDI, Division of Benefit Services.

On March 10, 1978 the folder was selected as a Quality Assurance sample case by the BDI, Medical Consultant Staff.

On March 23, 1978, after review by the Medical Consultant Staff, the folder was returned to the Vermont DDA with the recommendation that a neurological consultative examination be obtained.

On April 3, 1978 the folder was received by the Vermont DDA.

On April 27, 1978 Dr. Peter P. Upton conducted a neurological consultative examination of the claimant.

On May 1, 1978 the report of the consultative examination was received by the Vermont DDA.

On May 18, 1978, based on the report of the consultative examination and newly acquired medical evidence of record from the Mary Hitchcock Memorial Hospital, Dartmouth-Hitchcock Medical Center, and Dr. Satish Chawla, a determination reopening and affirming the cessation of disability was made by the Vermont DDA.

On May 23, 1978 the folder was again routed to the BDI in Baltimore, where it was received by the BDI Medical Consultant Staff on May 31, 1978.

On June 5, 1978 the proposed cessation date of September, 1977 and termination of benefits effective November, 1977 was approved by BDI.

On June 6, 1978 a letter was sent to the claimant advising him that the cessation and termination of benefits had been upheld after reconsideration.

The following events, reported by Judge Fischer, occurred in the case of Leon S. Day from the time of his request for a hearing to the present:

On June 16, 1978 the Social Security District Office in Rutland received a letter, dated June 14, 1978, from Attorney Richard Munzing requesting a hearing on behalf of Leon Day. On the same day, George Bedard of the Rutland District Office prepared and signed Form SSA-501, Request for Hearing, set the acknowledgement date of June 14, 1978, and sent it to Attorney Richard Munzing to obtain Mr. Day's signature. A copy of SSA-501 was not sent to BHA Manchester at that time.

On August 11, 1978 the Rutland District Office received the Form SSA-501 from Attorney Munzing.

On August 14, 1978 BHA Manchester received a copy of the Form SSA-501 of Leon Day from the Rutland District Office.

On August 23, 1978 Christopher Field of the Rutland District Office sent a letter to Attorney Munzing asking him to come to either the Brattleboro District Office or the Rutland District Office to review the claim file of Leon Day.

On August 31, 1978 BHA Manchester received the claims file of Leon Day from the Rutland District Office. On the same day, the case was assigned to Administrative Law Judge Hermann. The case was to be scheduled for hearing in Brattleboro, Vermont during the next scheduled trip there.

On November 8, 1978 Attorney Munzing telephoned BHA Manchester, spoke to Pamela LaBreque, Clerk Stenographer, and requested that a hearing be scheduled for Leon Day as soon as possible.

On November 20, 1978 a hearing notice was mailed to Leon Day and Attorney Munzing.

A hearing was scheduled for and held on December 4, 1978 in the District Court Room, Old Post Office Building, White River Junction, Vermont. In attendance were Vir-

ginia Day, wife of the claimant, Attorney Munzing, Administrative Law Judge Robert Hermann, and Joy Williamson, Hearing Assistant. At the hearing, Attorney Munzing requested that the case be held open for two weeks in order for him to submit medical evidence and a brief. Judge Hermann granted the request.

On December 26, 1978 BHA Manchester received medical evidence and a brief submitted by Attorney Munzing. Judge Hermann's hearing decision affirming cessation was sent to Mr. Day on January 17, 1979.

As to the Objection to Interrogatory No. 9.

/s/ Anne M. Gulyassy
ANNE M. GULYASSY
Attorney, Department of Justice
Attorney for Defendant
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

STATE OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Robert C. Green, being duly sworn, hereby depose and say that I am the Regional Commissioner, Boston Region, Social Security Administration, Department of Health, Education, and Welfare; that as such I am authorized to and do make this verification for and on behalf of the Secretary of Health, Education, and Welfare, acting by and through the Social Security Administration; further, that upon information furnished to me in good faith and on the basis of the best information available within SSA, the undersigned representative of the Secretary of the Department of Health, Education, and Welfare hereby declares that the aforesaid Answers to Plaintiff's Interrogatories are true to the best of my knowledge, information, and belief.

/s/ Robert C. Green
ROBERT C. GREEN
Regional Commissioner, Boston Region
Social Security Administration
Department of Health, Education, and Welfare

Subscribed and sworn to before
me this 23rd day of January
1979.

/s/ Janet L. (illegible)
Notary Public

My Commission expires: September 14, 1984

STATE OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Harold H. Fischer, being duly sworn, hereby depose and say that I am the Regional Chief Administrative Law Judge, Boston Region, Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare; that as such I am authorized to and do make this verification for and on behalf of the Secretary of the Department of Health, Education, and Welfare, acting by and through the Social Security Administration, and the Bureau of Hearings and Appeals; further, that upon information furnished to me in good faith and on the basis of the best information available within the Bureau of Hearings and Appeals, the undersigned representative of the Secretary of the Department of Health, Education, and Welfare hereby declares that the aforesaid Answers to Plaintiff's Interrogatories are true to the best of my knowledge, information, and belief.

/s/ Harold H. Fischer
HAROLD H. FISCHER
Regional Chief Administrative Law Judge
Bureau of Hearings and Appeals
Social Security Administration
Department of Health, Education, and Welfare

Subscribed and sworn to before
me this 22nd day of January
1979.

/s/ Janet L. (illegible)
Notary Public

My Commission expires: Sept. 14, 1984

ATTACHMENT A

Title II Claims Processed by Vermont DDA

Month	a Title II Total	b Initial Favorable	c Initial Unfavorable	d Cessations	e Favorable Reconsiderations	f Unfavorable Recons.
10/76	157	78	79	12	11	15
11/76	158	87	71	4	3	18
12/76	168	95	73	7	6	26
1/77	104	53	51	3	8	21
2/77	107	63	44	0	6	2
3/77	174	97	77	6	7	23
4/77	163	81	82	0	6	14
5/77	201	97	104	12	2	13
6/77	220	111	109	19	8	30
7/77	144	68	76	7	9	24
8/77	163	77	86	7	4	31
9/77	129	70	59	9	6	13
10/77	218	130	88	9	8	35
11/77	96	55	41	4	8	21
12/77	141	80	61	2	2	15
1/78	101	52	49	5	1	26
2/78	108	57	51	7	5	23
3/78	126	81	45	8	6	29
4/78	127	70	57	4	3	25
5/78	139	69	70	1	5	7
6/78	122	72	50	1	8	15
7/78	75	45	30	6	3	12
8/78	89	43	46	4	3	9
9/78	135	71	64	2	4	23
10/78	123	67	56	1	3	13
11/78	100	45	55	3	2	22
Totals	3588	1914	1674	143	137	505

ATTACHMENT B

#12—Monthly Breakdown of Vermont Straight Title II Disability Requests of Hearings

	1977	1978 (to 12/15/78)
January	12	18
February	11	9
March	14	11
April	10	24
May	13	20
June	21	17
July	13	10
August	19	7
September	19	9
October	21	13
November	17	13
December	11	10
TOTAL	181	161

ATTACHMENT C

Date of Request for Hearing	Date(s) of Hearing(s) Scheduled	Date of Hearing	Date of Hearing Decision
6/19/78	9/20/78	9/20/78	9/29/78
2/28/78	7/13/78	7/13/78	11/29/78
1/20/78	7/12/78	7/12/78	7/31/78
1/5/78	4/14/78 [sic]	4/12/78	8/30/78
9/18/78	11/7/78	11/7/78	11/21/78
2/7/78	7/12/78	7/12/78	7/31/78
3/17/78	7/7/78	7/7/78	10/31/78
8/3/76	11/18/76	5/12/77	7/18/77
	12/9/77 [sic]		
	2/18/77		
	5/12/77		
11/8/76	1/21/77	1/21/77	7/29/77
12/10/76	5/26/77	8/12/77	11/9/77
	8/12/77		
12/17/76	5/27/77	5/27/77	6/30/77
12/28/76	5/5/77	5/5/77	6/30/77
12/29/76	8/16/77 [sic]	8/16/66	12/30/77
1/4/77	6/17/77	6/17/77	7/18/77
1/4/77	5/27/77	6/16/77	7/18/77
	6/16/77		
1/10/77	6/16/77	6/28/77	7/18/77
	6/28/77		
1/10/77	5/26/77	6/21/77	12/30/77
	6/21/77		
1/11/77	5/20/77	8/18/77	11/28/77
	6/22/77		
	8/18/77		
1/18/77	5/12/77	5/29/77	7/18/77
	5/29/77		
1/19/77	5/27/77	5/27/77	8/29/77
1/25/77	5/27/77	5/27/77	7/18/77
2/1/77	6/16/77	6/16/77	11/9/77
2/2/77	6/22/77	8/17/77	8/31/77
	8/17/77		
2/3/77	5/26/77	5/26/77	12/30/77
2/9/77	5/20/77	6/23/77	8/17/77
	6/7/77		
	6/23/77		
2/17/77	5/27/77	5/27/77	11/30/77
2/22/77	6/22/77	6/22/77	7/29/77
2/22/77	6/22/77	6/22/77	8/17/77
2/23/77	6/22/77	6/22/77	8/31/77
2/25/77	6/21/77	6/21/77	8/26/77
4/6/77	8/16/77	8/16/77	9/6/77

NOTE: This information was obtained from a manual audit of the hearing decisions issued through December 15, 1978.

Date of Request for Hearing	Date(s) of Hearing(s) Scheduled	Date of Hearing	Date of Hearing Decision
4/7/77	6/29/77	6/29/77	8/22/77
4/13/77	6/17/77	6/17/77	8/31/77
4/21/66 [sic]	6/27/77	6/27/77	7/29/77
4/28/77	6/17/77	6/17/77	8/29/77
4/28/77	6/15/77	6/15/77	8/31/77
6/21/77	10/12/77	10/12/77	6/29/78
7/21/77	9/21/77	9/21/77	10/26/77
7/26/77	9/23/77	9/23/77	11/20/77
7/26/77	8/26/77 11/3/77 2/3/78	2/3/78	5/31/78
7/28/77	9/21/77	9/21/77	10/21/77
7/28/77	10/4/77	10/4/77	12/21/77
9/12/77	1/5/78	1/5/78	1/25/78
9/14/77	12/6/77	12/6/77	12/21/77
9/8/77	1/6/78	1/6/78	2/17/78
9/13/77	11/16/77 2/23/78	2/23/78	withdrawal
9/23/77	1/6/78	1/6/78	1/26/78
11/22/77	1/17/78	1/17/78	1/27/78
12/19/77	4/4/78	4/4/78	6/13/78
1/24/78	4/4/78	4/4/78	5/31/78
12/3/76	5/12/77	5/12/77	1/31/78
11/22/77	1/17/78	1/17/78	1/27/78
8/24/77	10/6/77	10/6/77	2/15/78
8/17/77	10/4/77 1/19/78	1/19/78	2/28/78
8/24/77	10/7/77 3/16/78	3/16/78	3/31/78
8/29/77	10/20/77	10/20/77	3/20/78
8/1/77	10/18/77	10/18/77	2/28/78
10/28/77	1/18/78	[sic] 1/18/77	2/9/78
12/15/77	3/16/78	3/16/78	3/27/78
11/23/77	2/15/78	2/15/78	2/27/78
10/20/77	12/21/77 1/18/78	1/18/78	5/15/78
8/26/77	11/8/77 1/14/78	1/14/78	8/21/78
11/15/77	1/16/78 2/15/78	2/15/78	2/27/78
9/8/77	12/9/77	12/9/77	2/28/78
10/17/77	12/14/77	12/14/77	1/11/78
11/1/77	1/20/78	1/28/78	1/30/78
10/28/77	12/5/77 1/17/78	1/17/78	1/22/78
11/25/77	2/17/78	2/17/78	4/12/78
11/9/77	12/15/77 2/17/78	2/17/78	2/28/78

Date of Request for Hearing	Date(s) of Hearing(s) Scheduled	Date of Hearing	Date of Hearing Decision
5/24/77	8/4/77 12/20/77	12/20/77	1/23/78
11/23/77	2/15/78	2/15/78	2/24/78
8/29/77	12/8/77	12/8/77	1/27/78
10/7/77	11/17/77 1/17/78	1/17/78	2/3/78
8/17/77	3/14/78	3/14/78	3/24/78
10/20/77	12/7/77 1/18/78	1/18/78	5/15/78
10/25/77	12/22/77	12/22/77	1/31/78
10/7/77	12/20/77	12/20/77	4/21/78
8/22/77	10/27/77	10/27/77	8/21/78
5/27/77	10/6/77 2/16/78	2/16/78	3/31/78
5/25/77	8/18/77	8/18/77	2/15/78
6/21/78	8/1/78	8/1/78	9/19/78
5/11/78	7/27/78	7/27/78	8/21/78
6/16/78	9/29/78	9/29/78	10/25/78
4/11/78	7/26/78	7/26/78	8/30/78
8/18/78	11/9/78	11/9/78	11/21/78
5/25/78	9/28/78	9/28/78	10/25/78
6/2/78	9/28/78	9/28/78	10/25/78
6/11/78	10/4/78	10/4/78	10/25/78
7/18/78	11/8/78	11/8/78	11/22/78
5/5/78	7/26/78	7/26/78	8/21/78
4/10/78	6/14/78	6/14/78	7/24/78
4/24/78	6/14/78	6/14/78	9/27/78
1/27/78	7/28/78	7/28/78	8/30/78
10/1/76	3/24/77	3/24/77	6/28/77
10/20/76	4/4/77	4/4/77	6/28/77
3/24/77	6/29/77	6/29/77	7/29/77
6/27/77	10/4/77	10/4/77	11/3/77
3/14/77	6/28/77	6/28/77	8/31/77
7/20/76	3/22/77	3/22/77	6/28/77
3/14/77	6/28/77	6/28/77	7/29/77
6/6/77	11/9/77	11/9/77	11/21/77
2/17/77	5/24/77 10/26/77	10/26/77	11/29/77
10/26/76	4/6/77	4/6/77	4/29/77
11/19/76	4/6/77	4/6/77	4/29/77
6/1/77	9/20/77	9/20/77	10/14/77
6/20/77	10/4/77	10/4/77	11/2/77
6/15/77	10/5/77	10/5/77	11/3/77
3/24/77	7/14/77	7/14/77	7/29/77
9/8/77	11/10/77	11/10/77	11/29/77
10/15/76	4/4/77	4/4/77	6/22/77
6/16/77	10/4/77	10/4/77	11/28/77

Date of Request for Hearing	Date(s) of Hearing(s) Scheduled	Date of Hearing	Date of Hearing Decision
3/23/77	6/29/77 10/6/77	10/6/77	11/22/77
9/27/76	1/25/77	1/25/77	2/16/77
10/6/76	3/24/77	3/24/77	3/31/77
11/1/76	4/4/77	4/4/77	7/29/77
9/1/76	1/25/77	1/25/77	5/23/77
6/14/77	9/21/77	9/21/77	10/19/77
9/12/77	11/10/77	11/10/77	11/16/77
6/3/77	11/9/77	11/9/77	11/28/77
3/31/77	7/12/77	7/12/77	7/29/77
9/15/77	11/9/77	11/9/77	11/29/77
6/22/77	10/6/77	10/6/77	11/4/77
5/25/77	9/20/77	9/20/77	11/23/77
10/19/77	1/10/78	1/10/78	2/13/78
1/6/78	3/15/78	3/15/78	3/31/78
11/28/77	3/1/78	3/1/78	10/10/78
1/24/78	3/1/78 4/20/78	4/20/78	5/4/78
3/13/78	5/9/78	5/9/78	6/19/78
3/13/78	5/22/78	5/22/78	6/15/78
11/10/77	1/11/78	1/11/78	1/20/78
11/7/77	1/24/78	1/24/78	1/30/78
2/23/78	7/11/78	7/11/78	7/28/78
5/19/78	8/15/78	8/15/78	10/6/78
11/28/77	2/27/78	2/27/78	3/13/78
2/10/78	4/19/78	4/19/78	9/20/78
12/16/77	3/14/78	3/14/78	3/31/78
5/10/78	7/13/78	7/13/78	7/28/78
10/19/77	1/11/78 & 5/22/78	5/22/78	8/29/78
2/10/78	4/18/78	4/18/78	4/26/78
12/29/77	3/1/78	3/1/78	3/13/78
10/26/77	1/25/78	1/25/78	1/31/78
11/2/77	1/26/78 6/7/78	6/7/78	7/17/78
2/6/78	6/6/78	6/6/78	10/12/78
6/16/77	9/22/77	9/22/77	7/31/78
6/16/78	8/15/78	8/15/78	9/14/78
6/8/78	8/16/78	8/16/78	9/12/78
2/9/78	3/16/78	3/16/78	3/31/78
5/16/78	8/17/78	8/17/78	11/22/78
11/16/77	2/28/78	2/28/78	3/13/78
2/16/78	4/17/78	4/17/78	7/27/78
1/23/78	4/17/78	4/17/78	4/26/78
6/22/78	8/16/78	8/16/78	9/12/78
11/1/77	1/25/78	1/25/78	1/30/78
5/3/78	6/6/78	6/6/78	6/14/78
4/11/78	7/13/78	7/13/78	10/30/78

Date of Request for Hearing	Date(s) of Hearing(s) Scheduled	Date of Hearing	Date of Hearing Decision
12/22/77	3/29/78	[sic] 3/39/78	3/31/78
11/29/77	3/16/78	3/16/78	4/27/78
10/26/77	1/26/78	1/26/78	3/24/78
3/20/78	5/24/78	9/14/78	11/9/78
	9/14/78		
2/16/78	4/19/78	4/19/78	4/26/78
1/19/78	3/27/78	3/27/78	6/30/78
6/13/77	9/21/77	9/21/77	1/16/78
11/16/77	1/24/78	1/24/78	2/27/78
4/7/78	7/13/78	7/13/78	9/12/78
2/7/78	4/19/78	4/19/78	4/28/78
2/27/78	4/20/78	4/20/78	4/28/78
1/27/78	3/15/78	3/15/78	3/24/78
1/12/78	3/27/78	3/27/78	5/31/78
1/3/78	3/15/78	6/6/78	7/31/78
	6/6/78		
12/14/77	3/28/78	3/28/78	4/13/78
10/7/77	1/10/78	1/10/78	2/28/78
10/20/77	1/10/78	5/22/78	10/30/78
	5/22/78		
9/21/77	11/29/77	9/15/78	11/9/78
	9/15/78		
3/29/78	6/8/78	6/8/78	6/30/78
11/22/77	4/17/78	4/17/78	4/28/78
4/4/78	8/31/78	8/31/78	10/27/78
7/14/77	9/23/77	10/28/77	3/30/78
	10/28/77		
7/18/77	10/28/77	10/28/77	1/12/78
10/3/77	10/28/77	10/28/77	4/14/78
3/29/78	8/30/78	8/30/78	11/22/78
7/15/77	9/22/77	9/22/77	12/9/77
7/21/77	9/20/77	10/26/77	4/10/78
	10/26/77		
4/10/78	8/30/78	8/30/78	9/27/78
8/24/78	8/31/78	8/31/78	10/23/78
5/15/78	8/31/78	8/31/78	10/23/78
11/30/77	1/27/78	1/27/78	2/13/78
4/18/78	8/30/78	8/30/78	10/31/78
7/25/77	9/20/77	9/20/77	12/9/77
7/29/77	9/20/77	9/20/77	1/3/78
7/29/77	9/20/77	9/20/77	1/3/78
8/23/77	10/26/77	10/26/77	5/24/78
6/30/77	10/27/77	11/17/77	1/26/78
	11/17/78 [sic]		
7/26/77	9/22/77	9/22/77	12/9/77
5/17/77	8/26/77	10/27/77	12/14/77
	9/8/77		
	10/27/77		

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., Secretary,
United States Department of Health,
Education, and Welfare, DEFENDANT

ANSWER TO VERIFIED COMPLAINT OF INTERVENING PLAINTIFF AMEDIE MAURAIS

The defendant hereby answers the intervening plaintiff's Complaint as follows:

FIRST DEFENSE

The Verified Complaint of Intervening Plaintiff Amedie Maurais fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

THIRD DEFENSE

The intervening plaintiff's Complaint does not present a justiciable case or controversy.

FOURTH DEFENSE

Mandamus will not lie against the named defendant to control the exercise of administrative judgment and discretion.

FIFTH DEFENSE

In response to the numbered allegations of the intervening plaintiff's Complaint, defendant answers as follows:

1. Defendant incorporates by reference his answer to paragraph 1 of the Amended Complaint of Leon Day.

2. Defendant incorporates by reference his answers to paragraphs 2, 3 and 4 of the Amended Complaint of Leon Day.

3. Defendant incorporates by reference his answers to paragraph 5 of the Amended Complaint of Leon Day.

4. Admit, except to allege affirmatively that his disability benefits were terminated effective November 30, 1977.

5. Defendant incorporates by reference his answers to paragraphs 6 and 7 of the Amended Complaint of Leon Day.

6. The first sentence is denied, and defendant alleges that plaintiff intervenor was determined to be disabled on April 20, 1976, with a disability onset date of April 3, 1975. The remainder of this paragraph is admitted, except that plaintiff intervenor collected disability benefits until April, 1978.

7. Admit, except to allege affirmatively that intervenor's request for reconsideration dated June 2, 1978 was received on June 5, 1978.

8. Defendant admits that no reconsideration determination had been made at the time of filing of the plaintiff Intervenor's Complaint, but that a notice of determination on reconsideration of disability was sent on January 4, 1979.

9. Deny first sentence. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore they are denied.

10. Deny first sentence. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore they are denied.

11. Defendant incorporates by reference his answers to paragraphs 8 through 14 of the Amended Complaint of Leon Day.

12. Defendant incorporates by reference his answers to paragraphs 15 through 20 of the Amended Complaint of Leon Day.

13. Defendant incorporates by reference his answers to paragraphs 21 through 31 of the Amended Complaint of Leon Day.

14. This paragraph incorporates by reference the Prayer for Relief in the Amended Complaint of Leon Day and therefore does not require an answer.

The defendant denies all allegations in plaintiff's Amended Complaint not specifically admitted, denied, or qualified hereinabove.

WHEREFORE, defendant prays that the Amended Complaint be dismissed and that it be granted its costs in this litigation and such other and further relief as may be deemed just and proper.

Respectfully submitted,

/s/ Barbara Allen Babcock
BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

WILLIAM E. GRAY
United States Attorney

PETER W. HALL
Assistant United States Attorney

/s/ Paul Blankenstein
PAUL BLANKENSTEIN

/s/ Anne M. Gulyassy
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Of Counsel:

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DONNA MCCARTHY, Esquire
Assistant Regional Attorney
Department of Health, Education,
and Welfare

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., Secretary,
United States Department of Health,
Education, and Welfare, DEFENDANT

ANSWER TO AMENDED COMPLAINT

The defendant hereby answers the Amended Complaint as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

THIRD DEFENSE

The Amended Complaint does not present a justiciable case or controversy.

FOURTH DEFENSE

Mandamus will not lie against the named defendant to control the exercise of administrative judgment and discretion.

FIFTH DEFENSE

In response to the numbered allegations of the Amended Complaint, defendant answers as follows:

1. This paragraph contains plaintiff's characterization of this action to which no answer is required, but insofar as an answer may be deemed required, deny.

2.-4. These paragraphs contain plaintiff's jurisdictional allegations to which no answer is required, but insofar as an answer may be deemed required, deny.

5.-7. Admit.

8. Admit, except to allege affirmatively that plaintiff's disability was found to have ceased in September, 1977 and that the combined monthly benefit to plaintiff and his family had been $723.00 prior to termination of entitlement.

9. Admit.

10. Admit, except to allege affirmatively that the determination was made June 5, 1978 and sent to plaintiff on June 6, 1978.

11. Admit.

12. Defendant admits that a hearing had not been held at the time of filing of the Amended Complaint, but alleges affirmatively that plaintiff's hearing was scheduled and held on December 4, 1978. Defendant admits the second sentence of this paragraph.

13. The first sentence is denied. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore they are denied.

14. Deny.

15. Deny, except to admit the first sentence.

16. Deny, except to admit plaintiff has initiated discovery by Interrogatories.

17-18. Deny.

19. The first sentence is denied. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence, and therefore they are denied.

20. Deny.

21.-24. Admit.

25. Deny.

26. Defendant's answers to paragraphs 21-23 are hereby adopted by reference as though they were fully set forth herein.

27. Deny, except to admit that the quoted words are found in 5 U.S.C. §§ 555(b), (e), and 706(1), and the Court is referred to the statutes for a full and complete statement of their contents.

28. Deny.

29. Defendant's answers to paragraphs 21-23 are hereby adopted by reference as though they were fully set forth herein.

30. Admit.

31. Deny.

The remaining paragraphs constitute plaintiff's prayer for relief and do not require an answer.

The defendant denies all allegations in plaintiff's amended Complaint not specifically admitted, denied, or qualified hereinabove.

WHEREFORE, defendant prays that the Amended Complaint be dismissed and that it be granted its costs in this litigation and such other and further relief as may be deemed just and proper.

Respectfully submitted,

/s/ Barbara Allen Babcock
BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

WILLIAM E. GRAY
United States Attorney

PETER W. HALL
Assistant United States Attorney

/s/ Paul Blankenstein
PAUL BLANKENSTEIN

/s/ Anne M. Gulyassy
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Department of Health, Education,
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., Secretary,
United States Department of Health,
Education, and Welfare, DEFENDANT

SUPPLEMENT TO DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

Now comes the defendant, Secretary of the Department of Health, Education, and Welfare, by his attorneys, and hereby supplements his answer to interrogatory 9 by providing a case-by-case breakdown of reconsideration determinations of adverse straight Title II disability initial determinations. The following data is provided: 1) the date each case for reconsideration was received in the DDA; and 2) the date each case, after reconsideration determination, was cleared from the DDA. The date of the actual request for reconsideration and reconsideration determination would precede or coincide with the date of receipt or clearance respectively.

These figures were derived from the Social Security Case Control Computer System which records file folder movement. DDA's dates of receipt and clearance are obtained from the list of cases cleared from the Social Security Case Control System for the period September through December 1978.[1] Defendant notes that some cases are sent to BDI in Baltimore after DDA's actions are completed. BDI's actual processing times are not available. However, all action on a case would have been completed before the case was cleared from the Social Security Gas Control System.

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[1] Periodically, certain information is purged from the computer. Thus, these figures are not available prior to September 1978.

CASES CLEARED FROM THE CASE CONTROL SYSTEM IN 9/78

Date Received in DDA	Date Cleared from DDA
7/10/78	8/24/78
7/5/78	8/15/78
8/14/78	8/17/78
7/31/78	8/29/78
5/11/78	8/29/78
6/26/78	8/18/78
8/9/78	8/17/78
5/1/78	8/15/78
7/25/78	8/18/78
7/25/78	9/5/78
5/15/78	7/13/78
7/31/78	9/6/78
7/25/78	8/28/78
8/25/78	9/11/78
8/9/78	9/11/78
5/30/78	8/30/78
8/18/78	9/13/78
6/12/78	9/13/78
7/5/78	8/2/78
4/28/78	9/14/78
12/27/77	3/8/78
8/4/78	8/24/78
8/18/78	9/19/78
8/18/78	9/20/78
6/27/78	7/7/78
7/25/78	8/4/78
7/31/78	8/10/78
9/1/78	9/21/78
8/18/78	9/18/78
5/30/78	9/18/78
3/13/78	9/13/78
7/10/78	9/26/78
8/4/78	9/20/78
2/27/78	3/7/78
5/30/78	6/21/78
3/1/78	6/22/78
8/18/78	8/25/78

CASES CLEARED FROM THE CASE CONTROL SYSTEM IN 10/78

Date Received in DDA	Date Cleared from DDA
8/30/78	9/21/78
9/12/78	9/28/78
4/14/78	4/19/78

Date Received in DDA	Date Cleared from DDA
8/4/78	10/4/78
9/19/78	10/3/78
8/4/78	10/6/78
12/20/77	5/9/78
6/28/78	9/28/78
9/6/78	9/26/78
9/25/78	10/3/78
9/6/78	10/5/78
9/14/78	10/10/78
9/15/78	10/3/78
8/14/78	10/2/78
9/6/78	10/2/78
7/25/78	10/5/78
10/12/78	10/13/78
10/4/78	10/13/78
9/6/78	10/6/78
9/28/78	10/10/78
8/4/78	10/5/78
8/23/78	9/7/78
8/9/78	9/11/78
6/26/78	10/25/78
8/9/78	10/11/78
9/21/78	10/26/78

CASES CLEARED FROM THE CASE CONTROL SYSTEM IN 11/78

Date Received in DDA	Date Cleared from DDA
8/25/78	9/26/78
9/25/78	10/23/78
10/6/78	10/30/78
8/30/78	10/17/78
10/11/78	10/31/78
6/16/78	10/31/78
10/12/78	11/2/78
8/30/78	10/27/78
8/23/78	10/27/78
9/14/78	11/9/78
10/16/78	10/20/78
10/26/78	11/15/78
7/25/78	11/6/78
10/2/78	10/13/78
11/21/78	11/22/78

CASES CLEARED FROM THE CASE CONTROL SYSTEM
IN 12/78

Date Received in DDA	Date Cleared from DDA
10/17/78	11/20/78
10/17/78	11/27/78
10/23/78	11/17/78
9/25/78	11/24/78
10/19/78	11/28/78
11/14/78	11/28/78
7/5/78	10/5/78
10/18/78	11/21/78
5/22/78	10/24/78
10/11/78	11/2/78
10/23/78	11/27/78
9/28/78	12/5/78
10/30/78	11/22/78
10/20/78	12/1/78
11/17/78	11/24/78
8/9/78	11/27/78
10/26/78	12/6/78
7/25/78	8/1/78
11/7/78	12/7/78
10/13/78	11/29/78
10/10/78	12/7/78
10/26/78	12/8/78
12/29/77	12/4/78
11/27/78	12/15/78
11/21/78	11/22/78
12/4/78	12/12/78
11/14/78	12/11/78
11/8/78	11/21/78
11/17/78	11/27/78
8/10/78	11/7/78
11/21/78	11/28/78
11/29/78	12/19/78

STATE OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Robert C. Green, being duly sworn, hereby depose and say that I am the Regional Commissioner, Boston Region, Social Security Administration, Department of Health, Education, and Welfare; that as such I am authorized to and do make this verification for and on behalf of the Secretary of Health, Education, and Welfare, acting by and through the Social Security Administration; further, that upon information furnished to me in good faith and on the basis of the best information available within SSA, the undersigned representative of the Secretary of the Department of Health, Education, and Welfare hereby declares that the aforesaid supplemental answers to Plaintiff's Interrogatories are true to the best of my knowledge, information, and belief.

/s/ Robert C. Green
ROBERT C. GREEN
Regional Commissioner, Boston Region
Social Security Administration
Department of Health, Education, and Welfare

Subscribed and sworn to before
me this 13th day of February
1979.

/s/ Janet L. (illegible)
Notary Public

My Commission expires: September 14, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action File No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated

v.

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education and Welfare

OPINION AND ORDER

In this action former recipients of Social Security disability benefits seek declaratory and injunctive relief against the Secretary of HEW for what they characterize as unreasonable and unlawful delays in the scheduling of hearings and in the issuance of decisions. The court has mandamus jurisdiction under 28 U.S.C. § 1361 to hear this case. It is presently before the court on plaintiffs' motion for class certification which is opposed by defendant. The issue has been briefed and argued by both parties.

Background:

Plaintiff Day was informed in December 1977 that the Secretary had determined claimant was no longer disabled and that the monthly benefits he had been receiving for two years were terminated. Plaintiff immediately filed a request for reconsideration. On June 6, 1978 the defendant issued a notice of reconsideration, affirming the earlier decision. On June 14 plaintiff requested a fair hearing of the reconsideration decision. At the time plaintiff Day filed this action on November 24, 1978, the defendant had yet to schedule a hearing date. A hearing was subsequently held on December 4, 1978 and a decision, reaffirming the cessation of benefits, was issued on January 17, 1979.

Plaintiff Amedie Maurais was notified in April of 1978 that in November 1977 his disability had ceased to exist and that he had been overpaid more than $2,000.00 in benefits. On June 2, 1978 he requested a reconsideration and a waiver of recoupment. The defendant had not issued a notice of reconsideration as of December 1, 1978, when Mr. Maurais filed his motion to intervene in this suit. The notice was subsequently received and a hearing was scheduled and held on March 29, 1979. At oral argument counsel for the Secretary informed the court that this claimant had received a favorable administrative decision.

Plaintiffs claim that the delays of 249 and 340 days between their initial requests for reconsideration and the eventual administrative hearings are unreasonable delays. They seek declaratory relief that these delays violate Title II of the Social Security Act at 42 U.S.C. § 405 (b), the Administrative Procedure Act at 5 U.S.C. §§ 555(b) and (e), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Plaintiffs also seek injunctive relief restraining defendant from continuing this pattern of lengthy delay. The class which they seek to certify is "all present and future Vermont residents seeking to secure Social Security disability benefits following an initial determination by the Secretary that no disability exists, and who experience an unreasonable delay in the scheduling of and/or issuance of decisions in reconsiderations and fair hearings."

Discussion:

To maintain a class action the plaintiff must first meet the prerequisites set forth at Fed.R.Civ.P. 23(a):

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or

> defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Although the defendant argued that common questions of fact are not involved, it was conceded, and the court agrees, that there are common questions of law and that joinder of all members is impracticable. Defendant contends, however, that plaintiffs do not meet prerequisites (3) and (4).

The defendant maintains that plaintiffs are not typical of the class they seek to represent because they are not claimants seeking reconsideration of an initial denial of benefits, but rather claimants seeking reconsideration of a determination that disability had ceased. Because of this distinction, according to defendant, the delays the named plaintiff experienced were atypical of the average claimant.

Plaintiffs contend that this is a distinction without a difference and proffer their own statistical analysis tending to show that long delays are experienced by claimants generally. Regardless of whether purported class members' benefits were terminated or initially denied, plaintiffs claim that they are representative and typical of all claimants who have suffered unreasonably long delays.

The meaning of "typical" as used in Rule 23(a)(3) has been the subject of much interpretation; the true import is not settled. *See, e.g.*, 3B Moore's Federal Practice § 23.06-2 at 23-325 (the requirement of typicality is duplicative of other provisions in Rule 23(a) and has no independent meaning); *but see Taylor* v. *Safeway Stores, Inc.*, 524 F.2d 263, 269-270 (10th Cir. 1975) (the requirement of typicality is independent of Rules 23(a)(2) and (4) and requires the plaintiff to prove that a class exists by comparing his claims and defenses with those of the purported class). Whatever interpretation may be assigned to this prerequisite, it is clear that typical does not mean identical. *Wofford* v. *Safeway Stores,*

Inc., 78 F.R.D. 460, 475 (N.D.Cal. 1978); *Cohen* v. *Uniroyal, Inc.*, 77 F.R.D. 685 (E.D.Pa. 1977); *Parker v. Bell Helicopter Co.*, 78 F.R.D. 507, 511 (N.D.Tex. 1978). For a plaintiff to be representative of a class, his interests need only be "sufficiently aligned," (*Wofford, supra* at 475), "coextensive with," (*Cohen, supra* at 691), or demonstrate that the members of the purported class suffer the same or similar grievance, (*Carter* v. *Newsday, Inc.*, 76 F.R.D. 9, 14 (E.D.N.Y. 1976). The plaintiff is regarded as representative of the class when their interests are mutual and not antagonistic. *Women's Committee for Equal Employment Opportunity* v. *National Broadcasting Co., Inc.*, 71 F.R.D. 666, 670 (S.D.N.Y. 1976).

Plaintiff has demonstrated that there exist numerous claimants who have experienced extensive delays in obtaining administrative hearings. Whether the class members are seeking reversal of an initial denial or of a cessation of benefits determination is immaterial for purposes of Rule 23(a)(3) as long as they experienced unreasonable and excessive delay. Moreover, plaintiffs have defined their class to exclude those claimants who obtain reasonably prompt hearings. Such claimants are not to be represented in the proposed class.

Defendant also contends that plaintiffs are not representative because of the possibility of antagonism of interests between the class and the plaintiff in that some claimants may prefer a substantial delay in the hope that a longer consideration of their claim will be advantageous to their claims. While this argument has some merit, it is not sufficient to defeat certification of the class. Should the court decide on the merits to grant relief favorable to the plaintiffs, it is possible to fashion relief to accommodate those members not interested, by providing for their waiver of a speedy decision.

Defendant urges that since the plaintiffs' individual claims have been rendered moot by the eventual scheduling of hearings and issuance of decisions, they cannot

fairly and adequately protect the interests of the class within the meaning of Rule 23(a)(4). The general rule is that there must be an actual controversy between the class representative and the defendant at the time the class is certified.

Without deciding whether or not plaintiffs' individual claims are moot, the court is satisfied that their complaints present the kind of issue that is "capable of repetition, yet evading review." *Southern Pacific Terminal Co.* v. *I.C.C.*, 219 U.S. 498, 515 (1911). As such, they fall within the limited exception recognized in *Sosna* v. *Iowa*, 419 U.S. 393 (1975) that a class action remains viable notwithstanding mootness of the representative claims prior to certification. *See also Gerstein* v. *Pugh*, 420 U.S. 103, 110, n.11 (1975).

Thus, the court finds that plaintiff has satisfied the requirements of Rule 23(a). This is not, however, the end of the inquiry. Defendant contends that class certification is neither necessary nor appropriate in this case under Rule 23(b)(2). The Secretary advances the argument that class certification will introduce an unnecessary complication to the litigation since whatever relief granted in this case would, under the principle of *stare decisis*, inure to the benefit of the purported class members. Defendant cites several cases in support of this proposition. However, upon examination of these decisions, it is apparent that they involve challenges to the constitutionality of statutes or regulations. In a situation where a statute is held to be unconstitutional as to the named plaintiff, its application would be impermissibly applied to everyone else, whether or not they are a party. Class certification would not be necessary.

The case now before the court is distinguishable. Plaintiffs have brought a mandamus action challenging not a statute, but the defendant's conduct in administering that statute and its regulations. Should the court decide that defendant's actions as to the named plaintiffs are unlawful, other social security claimants who had experienced some delays not identical to those experienced

by these two plaintiffs, would not necessarily benefit from that decision. Moreover, class certification is important to preserve this claim from the possible effect of mootness. *Dumas* v. *Cleveland*, Civ. No. 77-169 (D.Vt., July 21, 1978); *D.C.* v. *Surles*, Civ. No. 78-91 (D.Vt. Dec. 6, 1978). Accordingly, the requirements of Rule 23(b) are also met.

Finally, the defendant asks the court to redefine the class so as to limit it to "cessation" claimants and exclude "initial determination" claimants. As noted above, such a distinction is not made in the statutory or regulatory scheme of Title II of the Social Security Act. The court sees no reason to create such a distinction here.

Plaintiffs' motion for class certification is GRANTED.

Dated at Brattleboro, in the District of Vermont, this 14th day of June, 1979.

/s/ James S. Holden
JAMES S. HOLDEN
Chief Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

PATRICIA ROBERTS HARRIS, Secretary, United States Department of Health, Education and Welfare, DEFENDANT

SECOND SUPPLEMENT TO DEFENDANT'S ANSWER TO PLAINTIFF'S INTERROGATORY 9

Defendant hereby supplements her answer to Interrogatory 9 by providing a case-by-case breakdown of reconsideration determinations of adverse straight Title II disability initial determinations for January and February 1979. These figures reflect processing times as described in defendant's supplemental answer served February 13, 1979.

CASES CLEARED FROM THE CASE CONTROL SYSTEM
IN 1/79

Date Received in DDA	Date Cleared from DDA
11/22/78	4/13/79
11/17/78	12/31/78
5/26/78	7/19/79
12/14/78	12/19/78
11/21/78	12/29/78
11/21/78	12/29/78
12/19/78	1/8/79
11/7/78	12/8/78
11/21/78	1/2/79
11/17/78	11/28/78
11/22/78	1/11/79
10/26/78	11/29/78
12/22/78	1/16/79
1/15/79	1/16/79
12/27/78	1/9/79
9/11/78	10/31/78
1/10/79	1/18/79
10/13/78	10/20/78
10/11/78	12/1/78
12/15/78	1/9/79
10/4/78	1/19/79
1/12/79	1/19/79
10/26/78	12/5/78
11/17/78	1/17/79
12/19/78	1/24/79
12/15/78	1/17/79
1/4/79	1/8/79
12/12/78	12/20/78
11/21/78	12/20/78

CASES CLEARED FROM THE CASE CONTROL SYSTEM
IN 2/79

Date Received in DDA	Date Cleared from DDA
11/17/78	1/19/79
10/18/78	10/20/78
9/19/78	1/25/79
11/14/78	1/17/79
1/17/79	1/30/79
11/14/78	1/23/79
11/21/78	12/29/78
11/17/78	11/28/78
12/30/78	1/16/79
11/21/78	11/28/78
1/12/79	1/24/79
12/4/78	12/27/78
1/26/68 [sic]	1/30/79
12/19/78	1/31/79
1/31/79	2/5/79
1/12/79	2/7/79
8/23/78	1/31/79
10/2/78	1/23/79
11/8/78	12/12/78
1/15/79	2/5/79
12/7/78	12/15/78
12/19/78	1/8/79
1/4/79	2/13/79
1/4/79	2/5/79
1/4/79	3/1/79
12/15/78	2/8/79
2/8/79	2/15/79
1/25/79	2/7/79
2/13/79	2/19/79

STATE OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Robert C. Green, being duly sworn, hereby depose and say that I am the Regional Commissioner, Boston Region, Social Security Administration, Department of Health, Education, and Welfare; that as such I am authorized to and do make this verification for and on behalf of the Secretary of Health, Education, and Welfare, acting by and through the Social Security Administration; further, that upon information furnished to me in good faith and on the basis of the best information available within SSA, the undersigned representative of the Secretary of the Department of Health, Education, and Welfare hereby declares that the aforesaid supplemental answers to Plaintiff's Interrogatories are true to the best of my knowledge, information, and belief.

ROBERT C. GREEN
Regional Commissioner, Boston Region
Social Security Administration
Department of Health, Education, and Welfare

Subscribed and sworn to before
me this — day of February 1979.

_____

Notary Public

My Commission expires: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

PATRICIA ROBERTS HARRIS, Secretary, United States Department of Health, Education and Welfare, DEFENDANT

DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND INTERROGATORIES

Now comes the defendant, Secretary of the Department of Health, Education and Welfare, and hereby answers plaintiffs' Second Interrogatories, pursuant to Rule 33, Federal Rules of Civil Procedure.

For purposes of this Answer, the following definitions apply:

Initial denials: Those cases where an initial claim for disability benefits is denied.

Continuing disability investigations (CDIs): Those cases where the claimant has been receiving benefits, but upon periodic review of the disability status, a determination is made to terminate benefits.

Office of Disability Operations (ODO): This office carries on the functions of the former Bureau of Disability Insurance (BDI) centrally located in Baltimore, Maryland.

SECOND INTERROGATORY NO. 1:

For the period January 1, 1978 to the date of answer hereof, for each reconsideration of an adverse straight Title II disability initial determination, please give the date of the request for reconsideration and the date the reconsideration determination was issued. (NOTE: this

interrogatory is specifically intended to cover the period from the date the request for reconsideration is received by the relevant Social Security Administration District Office until the date the reconsideration determination is mailed to the claimant. It is expressly intended to include all periods and elements of processing including all cases sent to the Bureau of Disability Insurance for any reason).

ANSWER

To provide the information requested, defendant undertook a manual review of the records maintained by the Vermont Disability Determination Agency (DDA) for the period October 1, 1977[1] to January 31, 1980. These alphabetical records pertain to all disability claims made during that period (approximately 11,000) whether the claims were granted, denied, appealed, etc. Due to the differences in processing disability claims, defendant presents the results of this review by category:

I. *Initial Denials.* For the period October 1, 1977 to January 31, 1980, DDA processed 421 reconsiderations of initial denials (197 for FY 1978, 199 for FY 1979 and 25 for FY 1980). Attachment A contains the date each request for reconsideration (Form SSA-561) was received in the Social Security Administration District Office, the date the case was received in the DDA, the date the case was cleared by the DDA, and the processing time.[2] The average processing time for all of the 421 reconsiderations was 54.9 days (47.8 days for FY 1978, 60.9 days for FY 1979 and 62.7 days for FY 1980).

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[1] The records are kept in alphabetical order by fiscal year, which begins October 1. There is no strictly chronological or categorical record keeping system.

[2] The column marked "Other" in Attachment A contains miscellaneous notations made by the review team. Attachment A contains two additional columns, one showing the decision (affirmance or reversal) and the other showing where the claims folder was sent after DDA clearance.

Processing time was measured from the date the request for reconsideration was received at the District Office to the date the case was cleared by the DDA.

The DDA clearance date does not necessarily reflect "the date the reconsideration determination is mailed to the claimant" as requested. The letter notification which is mailed to the claimant is computer generated and no copy thereof is kept in the files searched. To determine the exact date of the mailing of notification, defendant would have to locate and review each of the 421 cases, a task considered to be overly burdensome in light of the alternative information here provided. With the possible exception of the limited types of cases noted below, the DDA clearance date shown in Attachment A would precede or follow the actual mailing date by only one or two days. Accordingly, the information provided in Attachment A is the best information available and closely approximates the mailing date sought by plaintiffs. Defendant objects to conducting a search for all 421 files to obtain this information.

The notice of determination would have been computer generated by the DDA and sent to the claimant within a day or two preceding or subsequent to DDA clearance in all but the following cases:

1. The notice of determination is manually prepared and released (either by the DDA or the SSA District Office) when it cannot be computer generated due to system limitations and in those Title II cases regarding childhood disability (CDB) and disabled widows/widowers (DWB) (cases not addressed in the instant litigation). In these cases, the notice of determination could be slightly delayed.

2. Cases excepted from the computer system requiring "special handling" are sent to ODO for preparation and release of special manual notices. Because of the minimal number of cases in this category,[3] defendant objects

[3] Attachment A reveals that 44 cases were sent to ODO. It cannot be determined whether these cases included any special handling

to providing this information as burdensome and not statistically relevant.

II. *Continuing Disability Investigations*

A different, and more time consuming, process applies to claimants who seek reconsideration of cessation of their benefits (CDIs). For the period October 1, 1977 to January 31, 1980, 32 cases in this category [4] were identified. All reconsiderations of cessation are subject to a preadjudicative review at ODO and decisional notices are not released until the review is complete. Review of the DDA records as described above, therefore, did not provide all the information requested by plaintiffs. Consequently, in order to obtain the processing times for these cases, it was necessary to locate and extract information from each of the claim folders. Defendant has obtained the requested information for 31 of the 32 cases. Defendant has been unsuccessful to date in an effort to locate the remaining claims folder, however, efforts are continuing.

Attachment B contains information similar to the information contained in Attachment A. It also includes case worksheets for each of the 31 cases, which show the date the request for reconsideration was received at the District Office, the date ODO prepared and released the notice of determination, and the processing time. Where available, individual case worksheets contain descriptions of factors which may have contributed to excessive proc-

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cases. Approximately ten percent of the reconsiderations of initial denials processed by the DDA, however, are sent to ODO for post-adjudicative sample review as a quality control measure. It is therefore presumed that most, if not all, of the 44 cases (approximately 10% of the 421 cases) were sent to ODO for sample review. This review does not delay the notice of decision, which, as previously explained, would have been sent to the claimant within one or two days prior or subsequent to DDA clearance.

[4] CDI's are approximately 8% of the total reconsideration cases.

essing times. The processing time (days elapsed) are shown below:

1. 24
2. 36
3. 47
4. 49
5. 52 *
6. 55
7. 58
8. 63
9. 70
10. 88
11. 93
12. 94
13. 96
14. 108
15. 111
16. 115
17. 122
18. 123
19. 131
20. 146
21. 154
22. 166 (Plaintiff Day)
23. 176
24. 191
25. 205
26. 213 (Plaintiff Maurais)
27. 217
28. 221 *
29. 323
30. 353 *
31. 395 *
32. No record

* Indicates notices not yet released.

STATE OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Robert C. Green, being duly sworn, hereby depose and say that I am the Regional Commissioner, Boston Region, Social Security Administration, Department of Health, Education, and Welfare; that as such I am authorized to and do make this verification for and on behalf of the Secretary of Health, Education, and Welfare, acting by and through the Social Security Administration; further, that upon information furnished to me in good faith and on the basis of the best information available within SSA, the undersigned representative of the Secretary of the Department of Health, Education, and Welfare hereby declares that the aforesaid answer to Plaintiffs' Second Interrogatories are true to the best of my knowledge, information, and belief.

/s/ Robert C. Green
ROBERT C. GREEN
Regional Commissioner Boston Region
Social Security Administration
Department of Health, Education, and Welfare

Subscribed and sworn to before
me this 15th day of February 1980.

/s/ [Illegible]
Notary Public

My Commission expires: Aug. 1, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action File No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

PATRICIA ROBERTS HARRIS, Secretary, United States Department of Health, Education and Welfare, DEFENDANT

MEMORANDUM OF DECISION

In this proceeding, designated and later certified as a class action, plaintiffs challenge the procedures used to determine whether a recipient of Social Security Disability benefits under Title II of the Social Security Act 42 U.S.C. § 401 *et seq.* (hereinafter the Act) has a continuing disability and is therefore entitled to further receipt of benefits. In their pleadings, plaintiffs seek declaratory and injunctive relief with respect to delays recipients encounter in each of two phases of the review procedures: the delay between the initial finding that the recipient is no longer disabled and the Agency's reconsideration of the finding; the delay between the request for an administrative hearing to review the adverse finding and the time the hearing is scheduled.

In an opinion and order dated December 28, 1979, the court granted partial summary judgment to the plaintiffs and held that the delays in scheduling the administrative hearings violated the Act's statutory directives to hold the hearings within a reasonable time. Applying the rule of *Barnett* v. *Califano*, 580 F.2d 28 (2d Cir. 1978), the court required the administrative hearings to be held within 90 days from the time they were requested. In its December order, the court also denied plaintiffs' motion for summary judgment on the issue of the delay in the reconsideration proceedings. The statistical data in-

cluded in the record were insufficient to support a contrary ruling inasmuch as they centered upon the State Agency's performance at the reconsideration phase and "did not reflect the length of delays incurred by the applicants themselves."

The Secretary subsequently provided the plaintiffs with additional factual data regarding the reconsideration proceedings. The parties have filed cross motions for partial summary judgment. The issue central to both petitions is whether reconsideration proceeding delays which exceed 30 days are unreasonable.

In their complaint the plaintiffs requested this court to direct the Secretary to limit the delays in the reconsideration proceedings to a maximum of 30 days. At the hearing on the motion, however, plaintiffs elaborated on the nature of the relief sought. At that time plaintiffs argued that the 30 day limit, although binding on the Secretary, should be flexible with respect to the recipients. Plaintiffs urge that the time constraint should be subject to voluntary waiver by recipients who request that the Secretary review additional medical evidence. Waiver would also result when the recipient failed to provide requested information or to appear as required.

Plaintiffs assert that the factual data available to the court at this time is sufficient to justify a ruling on their motion. According to the record, 31 cases during the period from October 1, 1977 through January 31, 1980, involved termination of benefits. Based on a processing time commencing with the date the reconsideration request was received by the Agency through the date the determination was made, one case was processed in less than 30 days; 6 were fully processed in less than 60; over half of the cases took over 120 days and 3 were incomplete after 221, 353, and 395 days respectively. The plaintiffs argue that this data is sufficient for the court to extend the *Barnett* rule to the reconsideration phase of the proceedings and to declare that any delay exceeding 30 days is unreasonable.

The Secretary, on the other hand, maintains that a mandatory 30 day time limit is patently unreasonable since the reconsideration review is a *de novo* review and the appeals process is an "open file" system which permits the claimant to submit additional evidence of his disability on a continuing basis. The defendant also argues that current processing times are reasonable in that the reconsideration process involves a thorough examination of all the evidence on the record and, frequently, the development of new medical evidence. Defendant's final assertion is that there is no statutory basis for the time limitations sought by plaintiffs and that judicial imposition of time constraints may later prove to be inconsistent with proposed legislation.

The law is well settled that on a motion for summary judgment under Fed.R.Civ.P. 56, the moving party must demonstrate that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Robertson* v. *Seidman & Seidman*, 609 F.2d 583 (2d Cir. 1979). C. Wright & A. Miller, *Federal Practice and Procedure* § 2725. When parties may draw conflicting inferences from factual data available in the record, granting summary judgment is inappropriate. *Id.* Inasmuch as the factual data in the record before the court is inconclusive with respect to the reasonableness of the delays in the reconsideration proceedings, the court will deny both parties' motions for summary judgment.

It should be noted at the outset that this is not a proper case for the extension of the *Barnett* rule. There the court required the Secretary to follow the statutory mandate in 42 U.S.C. § 405(b) to provide an administrative hearing within a reasonable time. Here, the only reference to the reconsideration process is contained in the regulations of the Act and they do not impose time constraints on the Secretary.[1]

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[1] The pertinent parts of the regulations contain the following:

§ 404.914 *Reconsidered determination.*

The Administration shall, when a request for reconsideration has been filed, as provided in §§ 404.910 and

At the heart of the court's refusal to grant either motion for summary judgment, however, is the inconclusiveness of the data before it. It is impossible to determine from the record whether the Secretary's procedures are reasonable or unreasonable. The mere length of processing times does not constitute an adequate basis for the extraordinary relief sought by the named plaintiff and the class he seeks to represent. Although the record does contain a sampling of 31 reconsideration cases and the time it took to process them, it is devoid of information concerning the reasons why the delays occurred. The plaintiffs have recognized that there will be times when the delay is either requested by the recipients to enable them to provide additional information or is caused by the recipients' failure to cooperate with the Secretary's requests. Similarly, the Secretary has acknowledged that delays may have been the result of increased case-load or

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404.911, reconsider the initial determination in question and the findings upon which it was based; and upon the basis of the evidence considered in connection with the initial determination and whatever other evidence is submitted by the parties or is otherwise obtained, the Administration shall make a reconsidered determination affirming or revising, in whole or in part, the findings and determination in question.

§ 404.915 *Notice of reconsidered determination.*

Written notice of the reconsidered determination shall be mailed to the parties at their last known addresses. The reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing (see § 404.917), or, if appropriate, the requirements for use of the expedited appeals process (see § 404.916a).

§ 404.916 *Effect of a reconsidered determination.*

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested in accordance with § 404.918 and a decision rendered or unless such determination is revised in accordance with § 404.956, or unless the expedited appeals process is used in accordance with § 404.916a.

insufficient staffing. It is clear, then, that the record is inconclusive with respect to the reasonableness of the delays. And since the reasonableness of the delays is the prime question before the court, the motions for summary judgment must be denied.

It is so ORDERED.

Dated at Rutland, in the District of Vermont, this 14th day of July, 1980.

/s/ James S. Holden
JAMES S. HOLDEN
Chief Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action File No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated

v.

PATRICIA ROBERTS HARRIS, Secretary, United States Department of Health, Education and Welfare

MEMORANDUM OF DECISION

In this certified class action, plaintiffs challenge the procedures used to determine whether a recipient of Social Security Disability benefits under Title II of the Social Security Act 42 U.S.C. § 401 *et seq.* (hereinafter the Act) has a continuing disability and is therefore entitled to further receipt of benefits. In their pleadings, plaintiffs seek declaratory and injunctive relief with respect to delays recipients encounter in each of two phases of the review procedures: the delay between the initial finding that the recipient is no longer disabled and the Agency's reconsideration of the finding; the delay between the request for an administrative hearing to review the adverse finding and the time the hearing is scheduled.

In an opinion and order dated December 28, 1979, the court granted partial summary judgment to the plaintiffs and held that the delays in scheduling the administrative hearings violated the Act's statutory directives to hold the hearings within a reasonable time. Applying the rule of *Barnett* v. *Califano*, 580 F.2d 28 (2d Cir. 1978), the court required the administrative hearings to be held within 90 days from the time they were requested. In its December order, the court also denied plaintiffs' motion for summary judgment on the issue of delay in the re-

consideration proceedings. The statistical data in the record were insufficient to support a contrary ruling.

The Secretary subsequently provided the plaintiffs with additional factual data and the parties filed cross motions for partial summary judgment. The issue central to both petitions was whether reconsideration proceeding delays which exceed 30 days are unreasonable. Both motions were denied, again because of the insufficiency of the factual data before the court.

After additional attempts at discovery proved to be unsuccessful, plaintiffs filed the following motions: 1) motion for summary judgment on the issue of reconsideration delay or 2) in the alternative to the motion for summary judgment a) a motion to compel discovery and b) a motion to direct entry of final judgment.

At a hearing before the court on November 18, 1980, the parties agreed as to the scope, content, and deadlines for additional discovery on the issue remaining in the case. It is the court's understanding that discovery is proceeding to the satisfaction of both parties. Since discovery is still in progress, the court will deny plaintiffs' motion for further summary judgment on the issue of reconsideration delays. Fed. R. Civ. Proc. 56 compels this result since factual disputes remain unresolved. In addition, the parties' agreement as to further discovery has disposed of the motion to compel.

The court is now called upon to determine the plaintiffs' motion to direct entry of final judgment for that portion of the court's opinion concerning the delays between the time an administrative hearing is requested and the time the hearing is scheduled. Plaintiffs are concerned that members of the class continue to be harmed by unreasonably delayed hearings while the remaining aspects of the litigation continue. As authority for their request, plaintiffs rely on Fed. R. Civ. P. 54 (b) and 56 (d). In the alternative, plaintiffs propose that the court preliminarily enjoin the defendants from scheduling disability hearings before an administrative law judge more

than 90 days from the date of a timely request. The Secretary opposes the motion because she states that regulations may be forthcoming which will conflict with such an order.

In this circuit, the standard for preliminary injunctive relief has recently been reiterated in *Jackson Dairy, Inc.* v. *H. P. Hood & Sons*, 596 F.2d 70 (2d Cir. 1979). In order to prevail on a motion for injunctive relief, the movant must demonstrate "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Id.* at 72. The required harm is the type of irreparable injury for which a monetary award cannot provide adequate compensation. *Id.*

Since the plaintiffs have prevailed on the merits on this issue, the sole question for consideration here is whether they will suffer irreparable harm if an injunction does not issue. In *White* v. *Mathews*, 559 F.2d 852 (2d Cir. 1977), the court recognized that with respect to claimants whose benefits are ultimately reinstated following an administrative hearing, unreasonable delays in the scheduling of the administrative hearings unjustifiably deprive them of benefits which are lawfully theirs. *Id.* at 859.

In Vermont, almost half of the claimants who requested hearings after January 1978 waited more than 90 days for the hearings to be scheduled, with the range of delays varying from two to nine months. Those who benefits were erroneously terminated were thus unjustifiably deprived of awards that were lawfully theirs. Inasmuch as the claimants are persons who are unable to work and whose subsistence depends on these payments, the deprivation of benefits works hardships which cannot adequately be compensated by retroactive payments following a delayed decision in their favor.

The court will therefore preliminarily enjoin the defendant from scheduling administrative hearings more than 90 days after a timely request for such a hearing is made. The designated time period will not apply when 1) the claimant or his representative causes a delay by failing to provide information needed for adjudication; 2) the claimant or his representative requests a delay; 3) the claimant or his representative fails to appear for the scheduled hearing; 4) the delay is in some other way attributable to the claimant or his representative. The injunction will extend from the date of this order to the time this case comes to final resolution on the issue of the delay in the reconsideration proceedings.

It is so ORDERED.

Dated at Rutland, in the District of Vermont, on this 30th day of December, 1980.

/s/ James S. Holden
JAMES S. HOLDEN
Chief Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil No. 78-266

LEON S. DAY AND AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

RICHARD S. SCHWEIKER, Secretary of Health and Human Services, DEFENDANT

DEFENDANT'S ANSWERS TO PLAINTIFFS' THIRD SET OF INTERROGATORIES

Pursuant to the Court's direction at the November 18, 1980 hearing on plaintiffs' motion to compel discovery, and the subsequent agreements made by counsel regarding the scope, content and deadlines for discovery, defendant by counsel submits for filing his Answers to Plaintiffs' Third Interrogatories. In light of the fact that defendant's answers consist of 77 individual randomly selected case summaries, defendant submits the case summaries themselves in lieu of individual responses to each of plaintiffs' enumerated interrogatories. The case summaries were provided to plaintiffs in two installments on January 14 and January 22, 1981.

STATE OF MARYLAND :

ss

COURT OF BALTIMORE:

I, Harris Factor, being duly sworn according to law, depose and say that I am Deputy Director of the Office of Regulations, Social Security Administration, Department of Health and Human Services. The Office of Regulations is responsible for coordination of litigation activities on behalf of the Commissioner of Social Security. The foregoing response to Plaintiff's Third Set of Interrogatories,

together with the attached 77 individual case summaries, were prepared by employees of several components of the Social Security Administration and are true and correct to the best of my information and belief.

/s/ Harris Factor
HARRIS FACTOR

Sworn and Subscribed before me
This 30th day of March, 1981

/s/ Dianne J. Cheverie
DIANNE J. CHEVERIE
Notary Public

My Commission expires 7/1/82.

KEY TO LETTER CODES

A. Claimant requests delay

B. New medical evidence or impairments indicated by clt on filing recon (see block on 561)

C. Claimant requests new medical exams on filing recon

D. DDS (or DO) decides *itself* to obtain new medical evidence

E. Case where face-to-face interview during recon recon process

F. Case where telephone interview or conduct during recon porcess

G. Case where no new medical evidence is obtained and claimant does not cause a delay in processing recons.

H. File was lost or misplaced during recon processing.

I. Case where special handling by ODO due to CAPS exceptions.

J. Case where DO inputs determination into systems due to systems limitations

K. Case where PSC or other source (not ODO, DO or DDS) inputs deterfination [sic] into system

L. Claimant caused delay

CASE 1 — B, F, G, J

1.	12/5/78	Request for recon form (561) signed by claimant
2.	12/7/78	D/O received recon request
3.	12/7/78	D/O forwarded folder to DOS
4.	12/11/78	DOS received folder
5.	12/11/78	DDS examiner phoned claimant regarding Med. sources on SSA-561-none current
6.	12/14/78	DDS examiner signed determination (831)
7.	12/14/78	DDS physician signed 831
8.	12/19/78	DDS input recon denial and set folder to D/O
9.	12/27/78	D/O reinput and date run
10.	1/1/79	Date of recon denial notice

CASE 2 — G

1.	9/20/79	Request for recon filed
2.	9/26/79	DDS recd folder
3.	9/26/79	Determination signed by DDS examiner
4.	9/27/79	Determination signed by DDS physician
5.	9/27/79	Systems input of denial
6.	10/1/79	Run date
7.	10/6/79	Notice of denial released to claimant

CASE 3 — D, Q

1.	5/3/79	Request for recon received
2.	5/10/79	Request for recon released to DDS
3.	5/22/79	VAH additional Med. evid. received, "as requested"
4.	5/28/79	RFC determined by DDS physician (claim selected for Q.A. review)
5.	7/18/79	Vocational analysis prepared by DDS examiner
6.	7/18/79	Determination of denial signed by DDS examiner and physician (VR referral)
7.	8/15/79	Systems input

8.	8/15/79	Run date
9.	8/15/79	Notice of denial to claimant

CASE 4 B, D, Q

1.	1/31/78	Claimant filed for recon
2.	2/1/78	D/O forwarder folder to DDS
3.	2/2/78	DDS recd file
*	2/3/78	DDS requested and sent out for Med. evidence from Dr. Gould
4.	2/10/78	DDS recd medical evidence from Dr. Nathaniel Gould
5.	2/10/78	DDS examiner signed determination (831)
6.	2/16/78	DDS physician signed 831
7.	2/17/78	DDS forwarded file to DDO
8.	2/23/78	ODO recd folder
9.	3/1/78	Internal ODO SSA-559 for preparation of denial notice
10.	3/9/78	ODO Med. Staff completed Quality assurance evaluation form SSA-3094
11.	3/14/78	ODO examiner completed SSA-3094 and sent folder to typing for recon notice
12.	3/16/78	Date of recon denial notice

CASE 5 D, F

1.	7/20/79	Claimant filed recon
2.	7/20/79	D/O forwarded folder to DDS
3.	7/23/79	DDS Recd folder
4.	7/23/79	DDS req. Med. report from Dr. Kuhlmann
5.	7/24/79	7/23/79 req. completed and sent
6.	8/2/79	DDs recd report dated 7/31/79 from Dr. R. F. Kuhlmann
7.	8/3/79	DDS req. another report from Dr. Kuhlmann
8.	8/6/79	8/3/79 req. completed and sent
9.	8/30/79	Two phone calls for follow-up on 8/6/79 Med. request

10.	9/5/79	DDS recd report date 5/11/79 from Dr. Kuhlmann
11.	9/6/79	DDS examiner signed determination (831)
12.	9/7/79	DDS physician signed 831
13.	9/13/79	DDS input for denial notice
14.	9/19/79	Date of denial notice for recon

CASE 6 D, F

1.	2/9/79	D/O recd ltr of 2/8/79 from legal rep. regarding 2/2/79 phone call that initial denial notice notrecd
2.	2/27/79	Letter from leg. rep. regarding filing for recon
3.	2/28/79	Claimant filed recon request
4.	3/5/79	D/O report of contact that good cause shown for late filing
5.	3/14/79	Appointment of representative form signed by claimant and rep.
6.	3/26/79	Reconsideration disability report and updated authorization to release forms signed by claimant
7.	3/27/79	D/O report of contact regarding claimants phone #
8.	3/27/79	D/O forwarded folder to DDS
9.	3/28/79	DDS recd folder
•	3/28/79	DDS req. and sent ltr to obtain Med. evidence from Dr. Zelazo
10.	3/28/79	DDS letter to claimant's legal rep. regarding submitting additional medical evidence
11.	4/12/79	DDS recd report dated 4/10/79 from Robert M. Zelazo, M.D.
12.	4/18/79	DDS examiner signed physician countersigned determination
13.	4/26/79	DDS input allowance
14.	4/26/79	Date run for payment of allowance

CASE 7 B, D

1.	8/3/79	Request for recon filed by claimant
2.	8/7/79	DO forwarded folder to DDS
3.	8/9/79	DDS recd folder
*	8/10/79	DDS req. and sent out req. for Med. evidence from Dr. Terrian
4.	8/20/79	DDS recd Med. report from C. M. Terrian, Sr. M. D.
5.	8/27/79	DDS examiner signed determination (831)
6.	8/27/79	DDS physician signed 831
7.	9/12/79	DDS released recon denial notice and forwarded to D/O.

CASE 8 D, J, Q

1.	11/16/78	Request for recon filed by claimant
2.	11/17/78	D/O forwarded folder to DDS
3.	11/21/78	DDS recd folder
*	11/24/78	DDS Requested Med. evidence from Dr. Thomas W. Martinini
*	11/27/78	Action taken on Medical request
4.	12/4/78	DDS recd 11/29/78 report from Thomas W. Martini, M. D.
5.	12/5/78	DDS examiner signed determination (831)
6.	12/11/78	DDS physician signed 831 DDS Q A
7.	12/27/78	Report of DDS contact that claimant had completed evaluation in 1974 and 1975
8.	1/2/79	DDS input allowance
9.	1/8/79	D/O input
10.	1/10/79	Run date-allowance paid Q A involved

CASE 9 G, Q

1.	9/7/77	Request for recon
2.	9/16/77	Case control inquiry—DO

3.	9/21/77	Request for folder from BDI-DO
4.		Folder received in DO
5.	10/6/77	Forwarded to DDS
6.	10/13/77	Received in DDS
7.	10/17/77	Determination signed-affirmation
8.	10/21/77	Notice to clt released
9.	10/21/77	File returned to DO.

CASE 10 B, Q
(Coquality review

1.	5/10/79	Request for recon filed
2.	5/15/79	ODO QA review by examiner
3.	6/6/79	DDS received folder
4.	6/8/79	Ltr. to doctor for Med. evidence and RFC
5.	6/28/79	RFC report from treating physician received
6.	6/29/79	Med. evaluation and RFC by DDS physician
7.	7/2/79	Referred to VR and photocopy of material
8.	7/2/79	Determination signed by DDS exmainer and physician
9.	7/9/79	Systems input by DDS
10.	7/9/79	Run date
11.	7/14/79	Notice of denial released to claimant

CASE 11 G, F

1.	2/21/79	Recon request filed by claimant
2.	2/22/79	D/O forwarded folder to DDS
3.	2/23/79	DDS read filed
4.	2/26/79	DDS ltr requesting medical evidence from Thomas W. Martenis
5.	3/7/79	DDS read medical evidence from Dr. Martenis
6.	3/12/79	DDS reviwed [sic] filed for severity
7.	3/14/79	DDS unsuccessful phone call to Dr. Martenis
8.	3/16/79	DDS second unsuccessful call to Dr. Martenis

9.	3/19/79	DDS third phone call—Dr. Martenis will send x-ray of hand
10.	3/21/79	DDS read x-ray of hand from Dr. Martenis
11.	3/21/79	DDS examiner signed determination (831)
12.	3/26/79	DDS physician signed 831
13.	4/2/79	DDS input allowance
14.	4/3/79	DDS returned folder to D/O
15.	4/4/79	Run date for payment of allowance

CASE 12 Q

1.	2/2/79	D/O telephone interview with claimant
2.	2/7/79	Claimant signed recon request (561)
3.	2/13/79	Recon request (561) read by D/O
4.	2/13/79	D/O forwarded folder to DDS
5.	2/14/79	DDS recd folder
6.	3/22/79	DDS examiner signed recon determination (831)
7.	3/26/79	DDS physician signed recon determination (831)
		QA-DDS
8.	3/28/79	DDS denial input—date run
9.	3/28/79	DDS forwarded to D/O
10.	4/2/79	Recon denial notice
		Neither File nor work sheet reflect reason for delay

CASE 13 B

1.	5/11/79	Request for recon filed (Denied at initial for *SGA*)
2.	10/16/79	Claimant reports no longer working (beginning 9/18/79)
3.	10/26/79	Report from employer received
4.	10/26/79	Report from employer received
5.	10/31/79	File released to DDS by D/O Rep.
6.	11/2/79	Med. evid. requested from treating sources

7.	11/21/79	Med. evid. received
8.	11/26/79	DDS examiner and physician signed determination of allowance
9.	11/28/79	Systems input
10.	12/19/79	Systems reject—run date
11.	1/22/80	ODO input allowance due to systems rejection (Future month of entitlement)

CASE 14 D

1.	8/23/75	Recon form (561) signed by claimant
1.5	8/29/75	Request to VA for updated medical info.
	8/29/75	Ltr sent by DDS
2.	9/19/75	Recon request recd in D/O from claimant's attorney
3.	10/20/15	Ltr to claimant's attorney that delay was due to non-recd of folder from BDD (ODO)
4.	11/17/75	D/O forwarded folder to DDS
5.	11/19/75	DDS recd folder
6.	11/28/75	DDS recd Med. report from VA White River Junction, VT
7.	11/28/75	DDS examiner sent ltr tt C/E Peter D. Upton, M. D. for C/E on 1/5/76
8.	1/5/76	C/E done
9.	1/8/76	C/E report recd by DDS
10.	1/15/76	DDS examiner signed determination (831)
11.	1/15/76	DDS physician signed 831
12.	1/16/76	DDS suit file to D/O
13.	1/23/76	DO report that payment being made pending W/C development
14.	2/21/76	ODO authorizer approved award (SSA-101) no subsequent recon involved on disability issue

CASE 15 G

1.	1/10/79	Claimant filed for Recon; also, Recon. Disability Rep't (SSA 3441) taken

2.	1/15/79	DO forwarded claim to DDS
3.	1/16/79	DDS rec'd claim folder
4.	1/25/79	Examiner signed determination (SSA-831)
5.	1/26/79	DDS MD countersigned
6.	1/31/79	DDS made systems input—Denial
7.	2/10/79	Ltr of denial to claimant

CASE 16 F, Q, B, D

1.	1/26/79	Request for Recon filed
2.	1/26/79	D/O rep released request to DDS
3.	1/30/79	Forms and cover letter sent to claimant by DDS examiner
4.	1/30/79	Hospital report requested by DDS examiner
5.	1/30/79	Follow-up phone contact with treating source DDS examiner
6.	1/30 79	Requested copies of office records from another treating source, by mail DDS examiner
7.	2/2/79	Additional evidence request letter released by DDS examiner
8.	2/5/79	Additional Med. evidence received by DDS
9.	2/14/79	Phone contact with treating physician —Follow-up by DDS examiner
10.	2/16/79	Phone contact with treating source by DDS examiner
11.	2/27/79	DDS examiner sent file to DDS physician for Med. opinion (QA involved)
12.	3/30/79	Consultative exam requested by DDS examiner
13.	4/4/79	Consultative exam performed
14.	4/11/79	Consultative exam report received by DDS
15.	4/12/79	Phone contact with consulting physician by DDS examiner

16. 4/17/79 RFC assessment by DDS claims specialist
17. 4/18/79 Determination signed by DDS examiner and physician
18. 4/18/79 Systems imput by DDS
19. 4/27/79 Notice of denial released

CASE 17 B

1. 11/1/79 Recon requested
2. 11/13/79 D/O released request to DDS
3. 11/21/19 Request sent to treating source for additional evidence, by DDS examiner
4. 11/29/79 Request sent to other treating sources for updated Med. evidence, by DDS examiner
5. 12/4/79 Additional evidence received from treating physician
6. 15/5/79 Additional evidence received from treating physician
7. 12/21/79 DDS physician signed residual functional capacity worksheet
8. 1/9/80 DDS examiner and physician signed determination
9. 1/11/80 Systems input
10 1/16/80 Run date of allowance

CASE 18 G, J, R

1. 2/16/79 Claimant filed request for recon
2. 2/16/79 DO forwarded folder to DDS
3. 2/20/79 DDS recd folder
4. 2/21/79 DDS examiner signed determination (831)
5. 2/21/79 DDS physician signed 831 DDS-QA
6. 2/23/19 DDS input
7. 2/27/79 Date run (DO re-input)
9. 3/7/79 Date of recon denial notice

CASE 19 B, Q

1.	10/16/79	Claimant filed recon and submitted Med. evidence
2.	10/17/79	D/O forwarded folder to DDS
3.	10/19/79	DDS recd folder
4.	10/22/79	DDS worksheet shows case ready for decision
5.	10/22/79	DDS recd D/O's 10/23/79 reply to congressional inquiry
6.	10/24/79	DDS recd D/O's 10/23/79 reply to congressional with duplicate med. evidence submitted at recon
7.	10/24/79	DDS physician report of contact with severity assessment
8.	10/30/79	DDS examiner signed determination (831)
9.	10/ /79	DDS physician signed 831 with day of month blank DDS-QA
10.	11/13/79	DDS input of allowance
11.	11/14/79	Date run for allowance payment
12.	11/15/79	DDS returned filed to D/O

CASE 20 D, Q, F

1.	7/7/79	Claimant signed recon from (SSA-561)
2.	7/9/79	D/O recd recon request
3.	7/23/79	D/O forwarded folder to DDS
4.	7/24/79	DDS recd recon
5.	7/24/79	DDS rev. file
6.	8/1/79	C/E request on work sheet from DDS
7.	8/2/79	DDS examines authorized a C/E from Brattleboro Memorial Hosp. for 8/15/79
8.	8/27/79	Out for Dr. signature follow-up on C/E
9.	8/28/79	DDS recd C/E report
10.	8/28/79	Reviewed C/E—does not meet or equal listings
11.	9/4/79	DDS examiner signed determination (831)

12.	9/6/79	DDS physician completed medical evaluation for residual functional capacity
13.	9/7/79	DDS physician signed 831 DDS QA
14.	9/14/79	DDS input for denial notice
15.	9/17/79	DDS returned folder to D/O There is no documentation as to date of the recon denial notice

CASE 21 G, Q

1.	9/17/79	Claimant signed recon form (SSA-561)
2.	9/21/79	Recon form received by D/O
3.	10/16/79	D/O forwarded folder to DDS
4.	10/19/79	DDS received folder
5.	10/24/79	DDS examiner signed determination (831)
6.	10/25/79	DDS physician signed 831 DDS QA
7.	11/1/79	Date of DDS recon denial notice

CASE 22 B, F, Q

1.	3/8/79	Claimant requested recon by letter
2.	4/11/79	Recon form (561) signed by claimant
3.	4/12/79	Recon received in D/O
4.	4/12/79	D/O forwarded folder to DDS
5.	4/16/79	DDS received folder—attempt call Dr. Edwards and Fabricius
6.	4/16/79	DDS received and sent for medical evidence from Dr. Edwards and Fabricius
7.	4/19/79	DDS received medical report from Keith R. Edwards, MD
8.	4/23/79	States to Dr. Peltz
9.	5/9/79	Dr. Peltz has info. and will send
10.	5/14/79	DDS received medical report from William Peltz, MD
11.	6/14/79	2 calls to orthopedic associates
12.	6/19/79	Call to orthopedic associates
13.	7/13/79	DDS received C/E report from Richard Fabricius, MD

14. 7/25/79 gave folder to DDS doctor for residual functional capacity assessment
15. 8/1/79 RFC completed
16. 8/21/79 DDS examiner signed determination (831)
17. 8/22/79 DDS physician signed 831 DDS-A
18. 8/24/79 DDS released recon denial notice
19. 8/24/79 DDS forwarded folder to D/O

CASE 23 B, F, F, D

1. 3/22/78 Recon request
2. 3/22/78 Sent to DDS
* 3/27/78 Req'd typist to type letter, DDS
3/28/78 received case
3. 3/30/78 Letter to attorney questioning medical reports; letter to VAH
4. 3/30/78 Telephone to claimant's home, wife said in hosp.; also, letter to Hosp. for rept.
5. 4/7/78 Letter from attorney with medical records
6. 4/10/78 Contact with MD office by DDS
7. 4/14/78 Letter from attorney with medical records
8. 5/10/78 Telephone to claimant for discussion of work activity
9. 5/24/78 Determination signed by exam; affirm
10. 5/24/78 notice sent by DDS to claimant and atty.

CASE 24 B, G

1.	12/5/79	Recon. filed; SSA3441 (Recon Disability Rept.
2.	12/10/79	File to DDS
3.	12/17/79	File received in DDS
4.	12/18/79	Examiner signed determination
5.	12/19/79	DDS MD countersigned determination
6.	12/20/79	DDS systems impact—Denial; File to D/O
7.	1/4/80	D/O systems impact; Systems Room—Denial

CASE 25 B, D, Q

1.	5/15/79	Request for recon filed by claimant
2.	5/23/79	D/O released file to DDS
3.	5/28/79	Additional Med. evidence requested from treating source with DDS examiner
4.	6/14/79	Additional Med. evidence received
5.	6/22/79	Consultative exam scheduled
6.	7/2/79	Consultative exam performed
7.	7/11/79	Consultative exam report received by DDS
8.	7/13/79	Determination signed by DDS examiner and physician
9.	7/16/79	Systems input
10.	7/17/79	Run date
11.	7/22/79	Notice of denial sent to claimant QA involved

CASE 26 B, D, J

1.	9/16/79	Request for recon file by claimant
2.	9/18/79	D/O released request to DDS
3.	9/19/79	File received in DDS
4.	9/27/79	Additional evidence requested from treating source by DDS examiner

5.	10/5/79	Additional evidence requested from treating source by DDS examiner
6.	10/10/79	Additional Med. evidence received in DDS
7.	10/17/79	Determination signed by DDS examiner
8.	10/19/79	Determination signed by DDS physician
9.	10/24/79	Systems input
10.	1/3/80	Manual release of Notice of denial, by D/O Rep.

CASE 27 B, D, F, Q

1.	4/13/79	Request for Recon filed
2.	4/13/79	DO released request to DDS
3.	4/16/79	Additional evidence requested from treating source by DDS examiner
4.	4/23/79	Additional Med. evidence received
5.	5/23/79	DDS examiner notified D/O status of claim
6.	6/14/79	DDS examiner notified D/O restatus of claim
7.	6/15/79	Consultative exam scheduled by DDS examiner
8.	6/18/79	Claimant reminded re CE by phone by DDS examiner
9.	6/18/79	Consultative performed
10.	6/27/79	Consultative report received in DDS
11.	7/3/79	Phone contact with consulting M.D.
12.	7/3/79	Determination signed by DDS examiner
13.	7/5/79	Determination signed by DDS physician
14.	7/6/79	Systems input
15.	7/11/79	Run date for allowance

CASE 28 D

1.	1/24/79	Request for recon
2.	1/26/79	Prior claim requested by D/O Rep.
3.	2/8/79	Request and file released to DDS by D/O Rep.

4.	2/28/79	Consultative exam performed
5.	3/5/79	Consultative exam report received by DDS examiner
6.	3/13/79	DDS examiner and physician signed determination
7.	3/20/79	Notice to claimant released to claimant

CASE 29 B, D, J

1.	11/30/77	Request for recon signed by claimant
2.	12/5/77	Request for recon filed (date stamped by D/O)
3.	12/5/77	DO forwarded folder to DDS
4.	12/6/77	DDS Rec'd folder
*	12/7/77	DDS req. and sent ltr for Med. evidence from Med. Center Hosp.
5.	12/12/77	DDS rec'd Medical report from Medical Center Hosp. of Vermont
*	12/28/77	DDS req. and sent for more recent evidence from Med. Center Hosp.
*	1/3/78	Recd Med. evidence from Med. Center Hosp.
6.	1/11/78	DDS examiner signed determination (831)
7.	1/12/78	DDS physician countersigned 831
8.	1/13/78	DDS released folder to D/O
9.	2/7/78	Run date for notice
10.	2/12/78	Date of Recon denial notice file reflects notice heldup because D/O did not handle CAPS properly

CASE 30 G, Q

1.	3/21/79	Rquest for recon filed
2.	4/12/79	Devel. req. went to DDS with folder on 4/12/79 (from BDI QA) with a recommendation to allow

3.	4/16/79	DO made telephone contact to BDF (Co) for folder which was not available due to QA activity, deficiency cited on initial denial. Note: As shown above the folder had been sent to the DDS for additional consideration
*	4/30 79	Sent form SSA 3369 to claimant (Vocational)
4.	5/4/79	Vocational Report Rec'd on 5/4/79
5.	5/7/79	Vocational report rec'd in DDS
*	4/23/79	Recon req. rec'd in DDS on 4/23/79
6.	5/8/79	Residual functional capacity rec'd. DDS selected case for QA review
7.	5/14/79	Allowed and signed by examiner and doctor. Allowed *not* as result of recon., but as a result of QA return
8.	5/23/79	Determination input by DDS
9.	5/29/79	Computer run—*in pay*

CASE 31 D, E, Q

1.	9/24/79	Request for recon filed by claimant
2.	9/25/79	DO ships folder to DDS
3.	10/1/79	Case rec'd in DDS; ltr to Dr and hospital for present time
4.	10/10/79	DDS examiner receives medical report from treating physician which was requested
5.	10/18/79	DDS physician authorizes C. E. out of state
6.	10/25/79	Claimant notified of exam on 11/2/79 by DDS examiner
7.	11/2/79	CDE scheduled with consulting physician
8.	11/14/79	Report of consulting physician received by DDS examiner
9.	11/15/79	DDS physician completes RFC evaluation
10.	11/19/79	DDS V.E. completes vocational assessment
11.	11/19/79	DDS examiner determine claim established

12.	11/20/79	DDS physician countersigns allowance case selected by DDS for QA
13.	12/3/79	DDS examiner releases folder to DO
14.	12/4/79	DO processes allowance

CASE 32 — B, Q, Congressional

1.	11/23/77	Request filed for reconsideration
2.	11/30/77	Appointment of representative (attorney)
3.	12/1/77	BDI QA review on initial determination
4.	12/7/77	Response to Congressional inquiry released by ODO
5.	undated	Case returned to DO
6.	12/28/77	Case released to DDS
7.	12/29/77	Claim received in DDS
8.	12/30/77	Determination signed by examiner
9.	1/3/78	Determination countersigned by DDS M.D.
10.	1/4/78	Notice released by DDS to claimant and attorney; case to DO

CASE 33 — I, F, G, L

1.	7/2/79	Recon filed
2.	7/24/79	SSA-847 (transmittal form) forwarding folder from ODO to DDS
3.	8/7/79	DDS recd folder
4.	8/7/79	DDS unsuccessful phone call to claimant regarding VA treatment
5.	8/8/79	DDS called claimant again (left message)
6.	8/14/79	DDS prepared ltr to VA for updated Med. evidence but did not send because of no Med. releases
7.	7/21/79	DDS sent Med. releases to claimant for signature
8.	8/22/79	Claimant called DDS regarding last VA treatment
9.	8/29/79	DDS called D/O to obtain Med. releases from claimant
10.	9/6/79	Claimant signed med. releases

11.	9/20/79	DDS examiner signed and physician countersigned determination (833) cessation
12.	9/24/79	DDS forwarded file to ODO
13.	9/26/79	ODO recd folder
14.	10/25/79	Date of recon cessation notice DDS did not obtain any evidence from the VA on recon

CASE 34 B

1.	10/10/78	Recon requested by claimant
2.	10/10/78	D/O released file to DDS
3.	10/16/78	DDS examiner sent request to treating source
4.	10/18/78	DDS receives Medical report from treating physician
5.	10/24/78	DDS examiner signed determination
6.	10/27/78	DDS physician signed determination
7.	11/2/78	Run date
8.	11/10/78	Date of Notice to claimant of allowance

CASE 35 B

1.	8/17/78	Recon requested
2.	8/17/78	D/O released file to DDS
3.	8/25/78	DDS examiner requested VA Med. evidence
4.	8/28/78	VAH evidence received in DDS
5.	8/29/78	Examiner and physician signed determination in DDS
6.	9/12/78	Systems input of denial
7.	9/13/78	Hearing requested

CASE 36 A, B, F, Q

1.	10/17/79	Request for Recon—DO
2.	10/23/79	Letter from clt attorney appt. form
3.	10/31/79	Letter from clt attorney—hold case for completion of forms

4. 11/30/79 Letter from clt attorney—Forms lost. Please send new forms
5. 12/26/79 Letter *to* attorney. Please submit forms
6. 12/31/79 Recon disability Report mailed to DO
7. 12/31/79 Case sent to DDS-DO
* 01/07/80 Request to treating physician for evidence by DDS examiner
* 01/07/80 Letter sent to attorney by DDS examiner
8. 1/9/80 DDS letter to attorney requesting reports attorney said would submit
9. 1/18/80 DDS received medical report from attorney
10. 1/18/80 RFC-DDS
11. 1/24/80 DDS vocational assessment—DDS
12. 1/28/80 Determination signed
* 1/31/80 Hospital report received
13. 2/1/80 DDS input to system
14. 2/5/80 System run date for payment

CASE 37 B, D

1. 10/15/79 Request for Recon—DO
2. 10/15/79 Recon disability report—DO
3. 10/19/79 Sent to DDS-DO
4. 10/22/79 Received DDS
5. 10/22/79 Medical report request to treating MD—DDS
6. 10/30/79 Medical report received from treating MD
7. 11/2/79 RFC-DDS
8. 11/13/79 DDS systeme [sic] input
9. 11/13/79 Denial affirmed—DDS
10. 11/15/79 Released to DO
11. 11/14/79 Run date for notice

CASE 38 G

1. 9/13/79 Recon filed; Case to DDS
2. 9/17/79 File received in DDS
3. 9/18/79 Examiner signed determination

4.	9/19/79	DDS dr. countersigned
5.	9/20/79	DDS systems input
6.	9/20/79	DO systems input
7.	9/24/79	Systems run; case to DO
8.	9/25/79	Case received in DO
9.	9/29/79	Letter of denial to Claimant

CASE 39 D, F, Q

1.	3/15/79	Filed reconsideration request; Letter dated 3/12 received from claimant with review of history of symptoms and medical treatment; Letter to claimant dated 3/8/79 from Dr. Robert J. Chapman received in DO 3/15; Case to DDS
2.	3/19/79	Case received in DDS
3.	3/21/79	Tel/c to dr's office, letter to Dr. for information
4.	3/22/79	Med. releases sent to claimant
5.	3/28/79	Letter received from claimant with signed medical release forms
6.	3/29/79	Diagnostic evaluation done in 6/78 and exam on 1/9/79 received from Dartmouth Med. School
7.	4/12/79	Letter dated 4/15/79 from Dr. Chapman; Tel/c to claimant re med. releases
8.	4/20/79	Determination signed by examiner—Denial
9.	4/23/79	Determination countersigned by DDS Md. Case selected by DDS for DDSQA review
10.	4/25/79	Systems input by DDS
11.	4/26/79	Case to DO; Systems run
12.	5/1/79	Letter dated 5/1/79 to claimant

CASE 40 D, Q

1.	6/16/79	Reconsideration filed
2.	not dated	CE authorized by DDS M. D.
3.	6/18/79	Med. releases sent to claimant for signature

4.	6/19/79	Ltr to claimant re consultative exam on 7/11/79
5.	7/19/79	Consultative examination rep't received; also, DO systems input
6.	7/20/79	Examines sized determination Dr. countersigned DDS selected case for QA review
7.	8/1/79	DDS systems input-allowance
8.	8/1/79	Systems RUN which triggered the letter of allowance to claimant

CASE 41 D, F, J, Q

1.	6/13/78	Reconsideration filed
2.	6/13/78	Case rec'd in DDS
3.	6/19/78	Ltr to T/MD re updated information
4.	9/19/78	Consultative exam req'd.
5.	10/18/78	Tel/C Dr. re report
6.	10/27/78	Consult rep't. rec'd. (Exam on 10/3 and 10/3 report dated 10/24/78)
7.	10/30/78	Examiner signed-allowed DDS MD countersigned Case selected by DDS for QA review systems
8.	10/31/78	DDS systems input; folder to DO
9.	11/1/78	DO received folder
10.	11/2/78	DO made systems input
11.	11/10/78	Letter to claimant allowed

CASE 42 B, Q

1.	12/23/77	Request for recon
2.	12/28/77	File released to DDS
3.	1/3/78	File received in DDS
4.	1/4/78	Medical evidence requested by DDS examiner
5.	1/16/78	Determination signed by DDS examiner and physician
6.	1/16/78	Notice of denial released to claimant QA involved

CASE 43 D

1. 12/1/77 Request for recon
2. 12/5/77 Sent to DDS
* 12/7/77 Req. Med. Evidence
3. 12/7/77 Received in DDS
4. 12/16/77 Report received from treating MD
5. 1/12/78 Telephone contact with treating MD by DDS
6. 1/16/78 Determination signed-affirm
7. 1/18/78 Sent to DO
8. 1/20/78 Received in DO
9. 1/20/18 Run date for notice

CASE 44 B, D

1. 10/10/79 Recon request—DO
2. 10/10/79 Recon Disability report—DO
3. 10/10/79 Sent to DDS—DO
4. 10/15/79 Received DDS
5. 10/15/79 DDS requests report from treating MD
6. 10/22/79 Report received from treating MD
7. 10/30/79 Determination signed-affirm
8. 11/1/79 Notice released

CASE 45 B, D, Q

1. 10/5/78 Claimant filed recon request
2. 10/6/78 D/O released file to DDS
3. 10/10/78 Folder received in DDS
4. 10/10/78 Request sent to treating source by DDS examiner
5. 12/21/78 DDS received Med. evidence from treating source
6. 12/26/78 Determination signed by DDS examiner and physician
7. DDS QA
8. 12/28/78 DDS physician's analysis requests additional Med. evidence
9. 1/10/79 DDS examiner makes phone contact with treating source

10.	1/11/79	Letter of request sent to Hospital, for additional evidence by DDS examiner
11.	1/22/79	DDS received additional Med. evidence
12.	1/27/79	DDS input allowance in systems
13.	1/24/79	DDS released folder to D/O
14.	2/2/79	Systems run date of payment

CASE 46 B, D, Q

1.	4/2/79	Reconsideration filed
2.	4/3/79	Attorney reviewed file
3.	4/10/79	Ltr. rec'd from attorney re recon.
4.	4/13/79	Ltr from attorney returning Medical release forms
5.	4/19/79	Recon disability report (SSA-3441) rec'd in Mail; Case forwarded to DDS
6.	4/27/79	Req. for consultative exam with copy of ltr to attorney
7.	4/30/79	Ltr to claimant re CE appt., 5/3/79
8.	5/18/79	Rept. rec'd from North County Hosp. and from Dr. James Moss dated 5/11/79
9.	5/24/79	Vocational assessment by Voc-specialist
10.	5/25/79	Determination signed by Examiner and denial
11.	5/28/79	Countersigned by MD in DDS
12.	5/31/79	Case selected by DDS for QA review. DDS systems input—denial; letter typed to claimant by DDS with a copy to attorney; folder to DO

CASE 47 B, D, F, Q

1.	4/9/79	Reconsideration filed; SSA 3441 Recon. disability rept.
2.	4/10/79	File to DDS
3.	4/18/79	Case rec'd in DDS
*	4/19/79	Ltr to T/MD for Med. info.
4.	4/24/79	Statement of Claimant (SSA-795) Re Med. treatment

*	4/25/79	Ltr. to a Dr. Munch for info.
*	5/21/79 & 5/30	T/C to Dr. Jamison for more Med.
5.	5/31/79	T/C with Dr. Paul Jamison (T/MD) re current condition
6.	6/7/79	Statement by DDS MD re Med. Condition "slight"
7.	6/11/79	Examiner signed determination DDS MD countersigned (Denial) DDS selected case for QA review
8.	6/13/79	DDS systems input; Case to DO
9.	6/14/79	DO systems input
10.	6/19/79	Letter dated this date to claimant—denial QA involved

CASE 48 B, D

1.	4/21/79	Req. for recon. taken over telephone
2.	4/23/79	Formal date stamp for recon as (SSA 561) rec'd in mail
3.	4/23/79	Case to DDS
4.	4/26/79	Case rec'd in DDS
*	4/26/79	DDS request updated VA evidence and ordered psy C/E
5.	5/2/79	VA report received for treatment 1/7/79-2/15/79
6.	5/17/79	Psychiatric report dictated dated 5/1/79. This was a consultative examination
7.	6/20/79	Consultative report rec'd 6/20/79
8.	6/22/79	Examiner signed decision to affirm denial
9.	6/25/79	DDS MD signed determination
10.	6/29/79	CAPS Run date for denial (Decision later reversed by ALJ)

CASE 49 D, Q

1.	4/2/79	Filed for reconsideration; also took SSA 3441 disability report
2.	4/19/79	File sent to DDS

3.	4/20/79	Folder rec'd in DDS
•	4/26/79	Ltr to Dr. Maxfield
•	6/6/79	Follow-up by letter to Dr. Maxfield
•	6/8/79	Rept rec'd from Dr. Maxfield dated 5/2/79
4.	6/11/79	Residual function cap. by Dr. Frost
•.	6/29/79	DO systems input
5.	7/19/79	Report from DDS Vocational specialist
6.	7/19/79	DDS examiner signed determination-affirmed denial
7.	7/23/79	DDS MD signed det. DDD selected case for QA review
8.	7/26/79	Case to DO; DDS systems input
9.	7/27/79	CAPS Run-denial (Later reversed by hearing)

CASE 50 B, D, F, I, Q

1.	11/4/77	Recon requested filed by Cl; recon disability Info. with Cl.
2.	11/18/77	Case rec'd in DDS. Clt. resident of N. H. but apparently confined to VAh in Vermont at time of initial decision
3.	11/22/77	Ltr to dr (T/MD) for Med. Info.
4.	12/2/77	Request for school counselor's report
5.	12/5/77	Claimant T/C DO entering hosp. for surgery
6.	12/8/77	Letter to dr. re surgery
7.	12/12/77	DDS MD called T/MD for info. Would not give info. by phone; Letter sent
8.	1/12/78	T/C to Dr. (office closed)
9.	1/13/78	Rept. rec'd from T/MD. Claimant had surgery and is in hosp.
10.	1/18/79 & 1/19/79	T/C to T/MD by DDS Md.
11.	1/19/78	Esaminer [sic] signed determination. Countersigned by doctor. Case selected for DDS QA review.
12.	1/23/78	Case to D/O
13.	1/27/78	DO triggered award

14.	2/2/78	Systems exception
15.	2/23/78	DO sent to BDI
16.	3/24/78	Award prepared by BDI
17.	3/30/78	Entered MADCAP
18.	4/6/78	Exception to input
19.	4/17/78	Re-entered input
20.	4/19/78	Exception of input
21.	5/5/78	Orbit purged
22.	6/8/78	Benefit summaries prepared
23.	6/9/78	Benefit data entered into system
24.	6/16/78	Award notice mailed

CASE 51 B, D, F, Q

1.	10/10/79	Recon filed
2.	10/15/79	Case rec'd in DDS; ref'd hosp. info.
3.	10/18/79	Letter rec'd from attorney
4.	10/22/79	Report rec'd from Dr. Herbert L. Martin; report rec'd. from Dr. Moshe Ziv; report rec'd from Medical Center Hospital
5.	11/2/79	Residual functional capacity by DDS MD
6.	11/5/79	T/C with attorney for claimants' typed for CE
7.	11/6/79	Tel/Contact with attorney; request for letter to be typed for CE
8.	11/17/79	Requested out-of-state consultative typed
9.	11/26/79	Apt. for CE
10.	11/30/79	CE report received in Florida DDS
11.	12/17/79	CE report rec'd from Fla. DDS
12.	12/20/79	Psychiatric functional capacity opinion by DDS MD
13.	12/28/79	Vocational assessment by DDS consultant
14.	1/2/80	Examiner signed determination and DDS MD countersigned Case selected by DDS for QA review
15.	1/5/80	DDS systems input-allow

16.	1/8/80	Folder sent to DO
17.	1/9/80	Systems run—letter of allowance sent to claimant QA involved

CASE 52 D, F, Q

1.	10/5/79	Request for recon. filed work activity report taken request of Med. info. from treating MD (All by DO)
2.	10/22/79	Recon. disability rep't. (SSA-3341) signed by claimant
3.	10/23/79	Med. rept. rec'd from T/MD, Dr. Le Branc C. Burns
4.	10/25/79	DO shipped folder to DDS
*	10/29/79	Folder rec'd in DDS
5.	11/8/79	VA report received
6.	11/27/79	Supplemental rept. rec'd from Dr. Burns
7.	12/10/79	Telephone call to Dr. Burns by DDS MD. Also, residual functional capacity evaluation made
8.	12/27/79	Med. consultative exam approved by DDS MD. Letter of req. sent to claimant
9.	12/31/79	App't for consultative exam
*	1/3/80	Dictated consultant's rept was taken by transcription (telephone)
10.	1/8/80	Consult rept. rec'd. from Hospital. DDS MD reviewed and gave statement re RFC
11.	1/10/80	Examiner signed determination—allowed
12.	1/15/79 [sic]	DDS doctor signed determination (Case selected by DDS for QA review)
13.	1/16/80	Rec'd. rept. signed from consult exam MD
14.	1/21/80	Folder to DO
15.	1/22/80	Run CAPS allowance processed—PAID

CASE 53 B, F

1.	2/23/79	Filed for reconsideration also, furnished SSA-3441 "Recon. disability rept." Furnished a copy of rept. from Dr. Alan Rubin and V. R. letter to him stating their services wouldn't help in allowing him to return to work. Also furnished ltr. from Richard L Sortell regarding 8 days of work he had performed. Mr. Sortelle is Pres. of Comm. Services
2.	3/19/79	File to DDS
3.	3/20/79	File rec'd in DDS
*	3/22/79	Requested rept. from Dr. Edwards
*	3/22/79	Voc. form to claimant
4.	4/9/79	Vocational report (SSA-3369)
*	4/29/79	Follow up to Dr. Edwards
5.	6/6/79	DO called DDS re recon. and was told case still pending
*	6/7/79	Follow up phone call to Dr. Edwards
6.	6/15/79	Rept. rec'd dated 5/29/79 from Dr. John R. Edwards
7.	6/18/79	Determination signed by examiner and DDS MD. Denial affirmed
8.	7/10/79	DO called DDS re recon. and was told case still pending
9.	7/24/79	DDS input—denial CAPS run same date. However, DDS sent denial ltr to claimant and cc. to Mr. Sortelle (social worker)
10.	7/24/79	Case ret'd to DO

CASE 54 B, D, F, L, Q

1.	2/5/79	Request for recon in D/O
2.	2/7/79	File released to DDS by D/O rep.
3.	2/8/79	File received in DDS
4.	2/8/79	Request for Medical report by DDS
5.	2/14/79	RFC analysis by DDS
6.	2/14/79	Consultative exam scheduled by DDS examiner

7. 2/16/79 Form sent to CE for authorization by DDS examiner
8. 2/21/79 Med. report received from treating physician
9. 3/6/79 Consultative exam performed
10. 3/12/79 Report of CE received in DDS
11. 3/12/79 Vocational assessment by DDS Voc. Specialist
12. 3/12/79 Determination signed by DDS exam and physician
13. 3/23/79 Vocational report sent to claimant
14. 4/3/79 Phone attempt to claimant re vocational report by DDS examiner
15. 4/5/79 DDS examiner called D/O re former employer
16. 4/5/79 DDS examiner released letter to former employer
17. 4/19/79 Phone call from claimant received by DDS examiner
18. 4/26/79 Vocational report received by DDS
19. 4/27/79 Systems input by DDS
20. 4/30/79 Systems run date
21. 5/6/79 Notice of denial to claimant
QA involved

CASE 55 D, F, Q

1. 11/7/79 Reconsideration filed
2. 11/14/79 Case received in DDS; telephone call to Mental Health Services
3. 11/19/79 Rept. rec'd from Mental Health Services
4. 11/29/79 Residual function capacity by DDS MD.
5. 12/11/79 Psychiatric functional restriction opinion by DDS MD
6. 12/14/79 Request for consultative exam
7. 12/27/79 Consultative appointment report dictated
Consultative rept. rec'd but wasn't dated as to receipt date

8.	1/10/80	Examiner signed determination. Dr. countersigned. DDS selected case for QA review
9.	1/17/80	DDS systems input-allowance; case to DO
10.	1/21/80	System run QA involved

CASE 56 B, D, F

1.	5/8/79	Filed for reconsideration
2.	5/10/79	Reconsideration disability rept.
3.	5/11/79	Telephone contact with claimant's wife. She called due to her concern for claimant
4.	5/22/79	Case rec'd in DDS; letter to VA for outpatient records
5.	6/18/79	Claimant's wife called DO re his being in hospital
6.	6/19/79	T/C claimant released from VAH
7.	6/20/79	Report of telephone call rec'd in DDS
8.	6/21/79	Ltr. to hosp. for summary; re-req'd. VAH info.
9.	7/2/79	Authorization rec'd re release of Med. info. rec'd rept. from Central Vermont Hosp. (Adm. 5/19/79 to 6/1/79)
10.	7/17/79	T/C someone will take claimant to VAH
11.	7/26, 8/2 8/21, 8/23, 8/28, 9/7/79	T/C (Follow up) to VAH for info.
12.	9/10/79	Rec'd VAH rept.
13.	9/14/79	Vocational spec. assessment and doctor (DDS) assessed residual functional capacity
14.	9/14/79	Examiner signed determination denial DDS-MD also signed det.
15.	9/18/79	DDS denial input. Case ret'd to DO Run date 9/19/79
16.	9/19/79	DDS denial input. Case ret'd to DP run date 9/19/79
17.	9/24/79	Ltr of denial to claimant

CASE 57 D, F, L

1.	3/16/79	Recon filed
2.	3/20/79	Case to DDS
3.	3/21/79	Case received in DDS; Consultative examination authorized
4.	3/22/79	Letter to claimant re consult ——— on 4/2/79; a statement from the employee dated 3/19/79 received by DO
5.	4/3/79	W/E didn't keep appt. for phone contact.
6.	4/3/79	Examiner signed determination.
7.	4/11/79	Dr. countersigned determination
8.	No date	2 phone attempts to locate claimant
9.	7/23/79	Tel. contact trying to contact claimant
10.	8/17/79	Residual functional capacity by DDS MD
11.	9/29/79	The SSA-834 rational dated this date
12.	10/3/79	DDS systems input—denial; file to DO
13.	10/4/79	Systems run—Denial
14.	10/9/79	Letter to claimant, this date.

CASE 58 B, D, Q,F

1.	10/13/77	Reconsideration filed; case sent to DDS
2.	10/17/77	Case received in DDS; T/C ck'd with VA for additional information
3.	11/16/77	T/c VA said he has appt. 9/20 and 11/15
4.	11/23/77	T/c appt. T/c file not in record room—VA
5.	12/1/77	Determination signed by disability examiner
6.	12/5/77	Determination signed by DDS Doctor
7.	12/6/77	Case to QA for review
8.	12/8/77	Eye C.E. ordered
9.	Not date stamped	VA rep't. treatment from 9/20/77 to 11/15/77 received
10.	12/15/77	T/c to claimant re med. info.
11.	1/4 & 17/78	T/c for report from CE.
12.	1/25/78	Consultative eye exam done on 12/12/77, but received on 1/25/78
13.	2/2/78	Denial letter typed by DDS with copy to Michael A. Corcoran, atty. VA Center Folder to DO

14.	2/6/78	Case received in DO QA involved

CASE 59 B, Q

1.	10/25/79	Recon. filed; additional medical evidence provided
2.	10/25/79	DO sent case to DDS
3.	10/29/79	DDS received folder
4.	11/7/79	Examiner signed determination DDS MD countersigned (Denied)
5.		DDS selected case for QA review
6.	1/7/80	Residual Functional Capacity by DDS MD
7.	1/9/80	Examiner signed SSA-834 (second page of SSA-831) Denied
8.	1/15/80	Denial letter typed by DDS as copy to attorney. Letter dated this date
9.	1/15/80	DDS systems input; Case to DO Note: Can't tell how the 2 months delay occurred, if QA was bogged down or if the DDS Md was or if the examiner did not take timely action. Worksheet was blank

CASE 60 F, J, Q, L

1.	2/21/78	Request for recon filed
2.	3/8/78	Released file to DDS by D/O
3.	3/13/78	File received in DDS
4.	3/29/78	File referred to DDS physician by DDS exam
5.	5/5/78	Attempt phone call to claimant. Unable to locate by DDS exam
6.	6/27/78	Claimant called by DDS to give new address
7.	6/27/78	Vocational report signed by claimant

8.	6/27/78	Vocational evaluation prepared by DDS VS
9.	8/4/78	DDS physician discussed case by phone with regional office physician
10.	9/12/78	DDS examiner and physician signed determination of denial
11.	9/13/78	DDS input decision into systems
12.	9/21/78	D/O input decision into systems
13.	9/22/78	Run date
14.	9/30/78	Date of notice of denial released to claimant

CASE 61 B, J, Q

1.	12/5/79	Recon filed; case to DDS
2.	12/10/79	Rec'd in DDS; Letter to T/MD
3.	12/31/79	Report received form Dr. James E. Simpson
4.	1/3/80	Residual Functional Capacity by DDS MD
5.	1/7/80	Determination signed by examiner
6.	1/8/80	Dr. countersigned determination
7.	1/17/80	DDS system input—denial. No DO system input to match, File to DO
8.	1/22/80	DO systems input on record. Run generated. Initial letter triggered instead of recon Note: When claimant came in after receiving initial denial letter the DO took another recon., but after checking they realized they should have taken a hearing.

CASE 62 D, Q

1.	6/13/78	Reconsideration filed by claimant; also by Dr. George W. Brooks of Vermont State Hospital
2.	6/15/78	Report received dated 6/12/78 from Dr. Grace Anthony

3.	7/6/78	Letter to claimant from DO re rep. payee. Also case sent to DDS.
4.	7/10/78	Case received in DDS' letter to Vermont State Hospital
5.	7/17/78	Vermont State Hospital report received
6.	7/17/78	Examiner (DDS) signed case as continuing
7.	7/18/78	DDS MD signed determination
8.	7/31/78	DDS QA reviewed case and sent to BDI. Also, unassociated medical report to BDI.
9.	8/18/78	MOD 1 reviewed and signed
10.	8/23/78	SSA-559 to claims authorizer from claims examiner with instructions regarding letter to claimant re benefits
11.	9/1/78	SSA-525B for rep. payee development
12.	10/3/78	SSA-559 from Cl. auth to Benefit auth. re reinstatement of benefits to be paid to State Hospital
13.	11/6/78	Personally typed letter to Vermont State Hospital re the amount they would be receiving for claimant

CASE 63 B, F, I

1.	7/23/79	Due Process notice released to claimant re cessation
2.	10/26/79	Request for recon received in D/O
3.	10/29/79	Letter of affirmation of cessation released by ODO benefit authorizer
4.	12/12/79	Systems termination of benefits
5.	12/28/79	Letter received ordering expeditious handling of case
6.	1/3/80	Recon disability report received in DDS from claimant
7.	1/4/80	Request for recon received in DDS
8.	1/4/80	Request sent for additional medical evidence, by DDS
9.	1/4/80	Additional medical evidence received from attorney

10.	1/7/80	File received in DDS from ODO
11.	1/11/80	Phone call to source to expedite medical evidence examined by DDS
12.	1/14/80	Additional medical evidence received from treating source
13.	1/15/80	Phone contact with treating source for clarification by DDS exam
14.	1/15/80	Determination signed by DDS examiner and physician
15.		File released to ODO for reversal to continuance
16.	1/31/80	ODO examiner signed determination
17.	1/31/80	Folder released to benefit authorizer for reinstatement of benefit payments
18.	2/15/80	Determination of resumption of award signed by benefit authorized input
19.	2/22/80	Systems resumed benefit payments
20.	3/10/80	Final complete notice released to claimant

CASE 64 G

1.	9/26/78	Recon request received
2.	9/27/78	D/O released file to DDS
3.	10/6/78	Determination signed by examiner and physician
4.	10/10/78	Systems input by DDS examiner, case to DO
5.	10/18/78	Systems input by D/O Rep.
6.	10/18/78	Run date
7.	10/24/78	Notice of denial released to claimant

CASE 65 B, Q

1.	8/29/78	Reconsideration filed
2.	8/30/78	File sent to DDS
3.	9/1/78	File rec'd in DDS
4.	9/5/78	Request sent to treating source by DDS exam
5.	9/12/78	Examiner signed determination Doctor countersigned

6.	9/18/78	DDS system input denial
7.	9/19/78	Case sent to DO
8.	10/5/78	DO system input No recon. letter generated to claimant according to file and report of contact with claimant on 2/2/79. Note: Hearing filed 12/21/78

CASE 66 B, D

1.	2/26/79	Recon. filed
2.	2/26/79	File to DDS
3.	2/28/79	Rec'd in DDS
4.		Report not dated VA report for treatment through 2/27/79
5.	3/12/79	Examiner signed determination
6.	3/13/79	DDS Md signed determination
7.	3/20/79	DDS System input; Folder to DO
8.	3/21/79	DO systems input
9.	3/27/79	Letter of denial to WE

CASE 67 D, F

1.	8/24/79	Claimant filed recon request
2.	9/5/79	D/O forwarded folder to DDS
3.	9/11/79	DDS rec'd folder
4.	9/11/79	DDS requested medical evidence from Dr. Dee Boff and Albany Medical Center
5.	9/24/79	DDS received medical report from Stuart Dee Boff, M.D.
6.	9/26/79	DDS phoned Albany Medical Center for follow-up; they had not received request
7.	10/1/79	DDS phone Dr. Dee Boff
8.	10/19/79	DDS contacted claimant via telephone for more information
9.	10/30/79	DDS examiner signed determination (831)
10.	10/31/79	DDS physician signed 831

11.	11/7/79	DDS input notice
12.	11/8/79	DDS forwarded file to D/O
13.	11/13/79	Date of recon denial notice

CASE 68 D, F, Q

1.	8/17/79	Request for Recon.; Recon Disability Report
2.	8/27/79	Case sent to DDS
3.	8/28/79	Case rec'd in DDS; letter to T/MD; letter to hospital
4.	10/5/79	Follow-up to T/MD for report; Consultative exam. authorized
5.	10/25/79	Letter to claimant for CE
6.	11/2/79	CE performed
7.	11/7/79	Follow-up T/MD for report
8.	11/8/79	C.E. Transcribed
9.	11/13/79	Determination signed—affirmed
10.		DDS selected case for QA review
11.	11/20/79	Case released to DO and systems input
12.	11/21/79	Case rec'd in DO
13.	11/23/79	Systems run date

CASE 69 B, D

1.	8/29/78	Request for recon filed
2.	8/29/78	Recon disability report submitted by claimant
3.	8/30/78	Folder released to DDS by D/O Rep.
4.	9/6/78	Folder rec'd in DDS; letters to Md. and VAH
5.	9/17/78	Medical evidence requested from VAH by DSS examiner
6.	9/13/78	Earnings record signed by Bureau of Data Processing Rep.
7.	9/19/78	VAH medical report received in DSS
9.	9/22/78	Systems input by D/O Rep (re insured status?)
9.	9/26/78	Determination signed by DDS examiner

10.	9/28/78	Determination siged [sic] by DDS physician
11.	10/5/78	DDS systems input
12.	10/6/78	Run date
13.	10/16/78	Notice of denial released to claimant

CASE 70 B, J, Q

1.	3/27/79	Filed for reconsideration; Rec'd SSA-827B-Med. Info. form; File sent to DDS
2.	3/28/79	File received in DDS
3.	4/17/79	DDS Md. reviewed case
4.	4/18/79	DO system input; Systems run date; Examiner signed determination
4.	4/19/79	DDS MD countersigned determination
5.	4/19/79	DDS MD countersigned determination
6.		Case selected by DDS for QA review
7.	4/23/79	DDS systems input
8.	4/24/79	Claim sent to DO
9.	5/7/79	Generated letter note stamped in DO, but no date on letter and no message—letter blank

CASE 71 D, F, Q

1.	2/14/79	Claimant requested recon
2.	2/23/79	D/O forwarded
3.	2/28/79	DDS received folder
4.	3/1/79	Requested VA output
5.	3/7/79	DDS received report of 3-5-79 from White River Jct., Vt. VA report
6.	3/12/79	DDS physician completed residual functional capacity assessment
7.	3/21/79	DDS received by examiner with claimant and VA regarding additional medical information
8.	3/23/79	DDS examiner signed determination and the same examiner completed vocational analysis

9.	3/26/79	DDS physician signed determination DDS QA
10.	3/30/79	DDS input denial
11.	4/3/79	Date run for denial notice
12.	4/9/79	Date or recon denial notice

CASE 72 B, J, Q

1.	2/15/79	Claimant filed recon request
2.	2/15/79	D/O forwarded recon to DDS
3.	2/16/79	DDS received folder; letter to hospital and T/MD
4.	2/26/79	DDS received 2-21-79 report from John M. Perry, Md.
5.	2/27/79	Follow-up to hospital for report (by mail)
6.	3/2/79	DDS received medical records from central Vermont hospital; a form 3369 with cover letter
7.	3/14/79	DDS examiner signed determination (831)
8.	3/15/79	DDS physician signed 831
9.	3/16/79	DDS informational report of contact regarding past work
10.	3/19/79	DDS input denial
11.	3/20/79	DDS returned folder to D/O
12.	3/22/79	D/O re-input—date run
13.	3/27/79	Date of recon denial notice

CASE 73 B, D

1.	2/15/79	Claimant filed for recon
2.	2/27/79	ODO transmitted filed to D/O after QA review (SSA-559 dated 2-27-79
3.	3/12/79	D/O received folder
4.	3/12/79	D/O forwarded folder to DDS
5.	3/13/79	DDS received folder
6.	3/26/79	DDS received 3-21-79 report from Dr. Marcia Hemley

7.	4/18/79	DDS received 4-16-79 report from Dr. Willard Reger
8.	4/19/79	DDS examiner signed determination (831)
9.	4/27/79	DDS physician signed 831
10.	5/9/79	DDS input denial notice—date run 5-9-79 to BDI
11.	5/14/79	Date or recon denial notice

CASE 74 F, G, J

1.	8/29/79	Request for recon filed
2.	8/30/79	Recon disability report submitted by claimant
3.	9/7/79	D/O Rep. inputs into systems
4.	9/10/79	Determination signed by examiner and physician
5.	9/14/79	Systems input by DDS Rep.
6.	9/17/79	Folder sent to D/O by DDS
7.	9/26/79	Phone contact with claimant by D/O claims Rep.
8.	9/26/79	Systems input by D/O Rep.
9.	9/26/79	Run date
10.	10/3/79	Hearing request filed

CASE 75 D, F, Q, L

1.	4/3/79	Request for recon received
2.	4/16/79	File released by D/O to DDS
3.	4/18/79	File received in DDS
4.	4/19/79	Consultative examination scheduled
5.	5/8/79	Letter received from claimant (refusing CE)
6.	5/8/79	Consultative examination cancelled
7.	6/27/79	Phone contact with treating source
8.	7/2/79	Determination signed by DDS examiner
9.	7/3/79	Determination signed by DDS physician
10.	7/20/79	Systems input (DDS)

11.	7/20/79	Run date
12.	7/25/79	Notice of denial released to claimant

CASE 76 D, Q, K

1.	6/9/78	Request for recon filed
2.	7/5/78	Received by DDS from D/O
3.	No date	Additional medical evidence received by DDS
4.	7/6/78	Hospital and doctor reports requested
5.	8/1/78	DDS examiner and physician signed determination
6.	?	QA involved
7.	8/10/78	Run date—rejected due to systems limitatations (reopening to continuance)
8.	8/10/78	File released to D/O by DDS
9.	8/18/78	Letter released re resumption of benefits
10.	9/12/78	ODO input resumption of payments due to systems limitation

CASE 77 B, D

1.	12/15/77	Filed reconsideration
2.	1/5/78	File to DDS
3.	1/13/78	Med. evidence received in DDS from BDI-Mod 1 from Dr. Donoghy
4.	1/13/78	Determination signed by examiner ceased
5.	1/16/78	Countersigned by DDS Md.
6.	1/16/78	File to BDI
7.	2/3/78	BDI-Mod 1 QA sent case to Med. Staff for review
8.	3/3/78	DDS Md. gave a statement re severity
9.	3/13/78	SSA-1774 sent to DDS for additional medical dev. in the way of a Psychiatric examiner
10.	3/23/78	Case received in DDS; DDS Md. requested CE; letter to claimant re app't. 3-30-78; letter to Med. Consultant re request for CE

11.	3/29/78	T/C from DO—Report of contact "dire need"
12.	4/13/78	Consult report received in DDS
13.	5/2/78	Med report received from treating physical dated 5-27-78
14.	5/16/78	SSA 1407 VR referral; examiner signed determination and DDS Md countersigned allowed. (831 made instead of 833
15.	5/17/78	To BDI
16.	6/5/78	Decision on SSA-833
17.	6/5/78	Mod-1 sent SSA 559 to reinstate to benefit authorizer
18.	6/28/78	Benefit authorizer prepared notice for computer systems input
19.	7/3/78	Systems Run
20.	7/19/78	Letter to claimant—reinstatement

APPENDIX 1

Department of
HEALTH, EDUCATION, AND WELFARE
Social Security Administration
Bureau of Hearings and Appeals

DECISION OF APPEALS COUNCIL

In the case of
LEON S. DAY
(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for
Continuance of Period of Disability
and Disability Insurance Benefits

008-16-8830
(Social Security Number)

ON REMAND FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF VERMONT
(Civil Action Number 79-102)

The Appeals Council adopts the recommended decision of June 27, 1980, and holds that the claimant continues to be entitled to a period of disability and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act, as amended.

APPEALS COUNCIL

/s/ Manny H. Smith
MANNY H. SMITH
Member

/s/ Joseph E. Doneghy
JOSEPH E. DONEGHY
Member

Date: 12 Sept. 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action File No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

PATRICIA ROBERTS HARRIS, Secretary, United States Department of Health and Human Services, DEFENDANT

DEFENDANT'S ANSWERS AND OBJECTIONS TO PLAINTIFFS' THIRD INTERROGATORIES AND REQUESTS FOR ADMISSIONS

Now comes the defendant, Secretary of the Department of Health and Human Services, and hereby answers plaintiffs' Third Interrogatories and Requests for Admissions pursuant to Rules 33 and 36, Federal Rules of Civil Procedure.

PLAINTIFFS' THIRD INTERROGATORIES

1. In response to plaintiffs' Second Interrogatory No. 1 dated January 14, 1980, information on 421 "initial denial" reconsideration cases was provided. By plaintiffs' count, some 291 of these cases took over thirty days to process to the point of DDA clearance. (See Attachment A to Answer to Second Interrogatory No. 1). For each said case, please provide a description of each action taken by DO, DDA, and/or ODO employees or contractors, including the location and date each said action occurred. Your answer should specifically include discussion of all efforts made to gather additional medical evidence, including mention of the name or title of the person who requested and who decided such additional evidence was necessary. Your answer should cover the entire period from date of receipt of reconsideration request at DO to date reconsideration determination is mailed the claimant.

2. The response to plaintiffs' Second Interrogatory No. 1 also included information on 31 "cessation" reconsideration cases. Please provide the same information within the same guidelines for each one of these cases as is requested in the preceding Interrogatory.

3. For each of the 322 reconsideration cases in the two preceding Interrogatories, in how many cases did the claimant, contemporaneously with or after requesting reconsideration:

A. Request a delay in the processing of the case.

B. Bring new medical problems or evidence to the defendant's attention that was unavailable in the making the initial determination.

C. Request that new medical examination(s) be scheduled.

(If any individual case fits more than one of the above three categories, please so indicate.)

4. For each of said 322 cases, please indicate in how many cases did the defendant or any agent unilaterally decide to gather additional medical evidence.

5. For each case noted in answering the preceding Interrogatory, please state what information was available to defendant or her agents leading to the decision to seek new medical evidence that was not available at the time the initial determination was made.

6. For each of the 322 cases discussed hereinabove, in how many cases did defendant or her agents conduct face-to-face interviews with claimants between request for reconsideration and reconsideration determination?

7. In reconsideration cases where the claimant does not cause a processing delay and where no new medical evidence need be gathered, carefully state what factors make defendant unable to issue reconsideration determinations within thirty (30) days in:

A. Initial Denial cases.

B. Cessation (CDI) cases.

8. Of the 322 cases discussed hereinabove, please state in how many cases was processing unaccomplished after thirty (30) days due to:

A. Increased caseload

B. Insufficient staff

C. Insufficient resources

D. Administrative error

E. Any other non-claimant caused factor

(If any case fits more than one of the above five categories, please so indicate.)

OBJECTION TO INTERROGATORIES 1-8

Defendant objects to providing answers to these interrogatories on the ground that it would be overly burdensome for the Social Security Administration to conduct a manual, file-by-file search of 322 individual claims.

For the Social Security Administration to obtain the information requested by plaintiffs, it would be necessary to obtain and then to manually examine each of the 322 claims folders. Such a burdensome activity would involve special computer programming to locate each folder, since folders could be located in any one of a number of locations. The folder could be located either in a social security district or branch office, a central SSA headquarters location, or in one of the many hearings offices throughout the nation. It could also be located in the SSA regional office, one of the State DDA offices (not necessarily Vermont, since a claimant could have moved from Vermont since the findings on the reconsideration claim), or at the Office of Hearings and Appeals in Arlington, Virginia, or SSA Headquarters in Woodlawn, Maryland. For those cases in which the computer print out does not reflect the current folder location, a special search would have to be conducted. Once the folders are located and obtained—a process that would take several months—

each folder would then have to be examined by a professional level employee who would have to extract and compile the information manually. This task would require detailed examination and analysis and would take approximately two to three hours per case.

The cost of completing an effort of this nature in terms of time, manpower and dollars is virtually inestimable, due to the many variables involved not conducive to dependable estimation. Examples of such variables include the number of employees who would need to be transferred from essential work activities (compared to the number of employees who could feasibly *be* spared to work on such a "discovery detail"), the length of time and effort necessary to locate and obtain any given claims folder, and the length of time necessary to extract the relevant information from a given folder. Additionally, manual coordination of such a complex task would be significant. The computerized list of names would have to be distributed to the appropriate locations, and the folders would then have to be forwarded to a central location for collection and tabulation. The disruption of the normal work flow which would be caused by this special review of hundred of files is also inestimable. The further potential disruption of the processing of these and other individual's claims, however slight or unintended, whether at the reconsideration stage or somewhere in the multistage appeals process, would be unavoidable. Many folders would have to be plucked from their rightful places awaiting adjudication or action by whichever offices were holding them at the time they were requested, and processing would be delayed significantly by this process. Conducting a study of the magnitude requested by plaintiffs would thus not only be unduly burdensome to defendant, but it could also be burdensome to some members of plaintiffs' class, as well as to other claimants, by unnecessarily delaying the processing of their claims.

9. How has the reconsideration caseload increased in Vermont in the last five years?

ANSWER TO INTERROGATORY 9

To answer this Interrogatory, defendant has compiled the number of disability and SSI reconsideration cases "cleared" from the SSA computer during fiscal years 1975-1979 (October to October). In addition, the information available for FY 1980 is provided (October to June).

Year	DDI Recons clear	SSI Recons clear
1975	529	323
1976	667	443
1977	514	383
1978	547	406
1979	597	435
Oct-June 1980	439	320

10. What is the present staff of the Vermont Disability Determination Agency, including breakdown by job-title, and how does staffing differ from five years ago?

ANSWER TO INTERROGATORY 10

The chart below sets out the staff positions in the Vermont DDA and the number of employees in each position for fiscal years 1975-79, and October-June 1980.

Vermont staffing categories:

Staffing	1975	1976	1977	1978	1979	Oct-June 1980
Super. (full)	3	1	1	1	1	2
Exam. (full)	6	6	5	4	6	7
Trainee Exam. (full)	1	—	1	1	1	2
Clerical (full)	7	7	7	7	7	5
(part time)	—	—	—	—	—	—
Case Consult. (full)	—	7	1	1	1	—
Admin. Person (full)	3	4	4	5	4	4
Medical Consult (full)	4	—	—	—	—	—
(part time)	—	5	5	4	7	10
Q.A. (full)	—	1	2	3	3	3

Staffing (cont'd)	1975	1976	1977	1978	1979	Oct-June 1980
Vocational (full)	—	—	—	—	—	—
All Other (full)	3	1	—	—	—	—
(part time)	—	1	2	2	1	5
Total Staff (full)	27	27	15	22	27	23
(part time)	—	1	7	6	8	15

11. What is ODO's (or BDI's) and DDA's present budget, and what were they five years ago and in each intervening year?

ANSWER TO INTERROGATORY 11

The charts below indicate the BDI/ODO and Vermont DDA budgets for the past five years.

Vermont DDA Budget:

Year	Budget
1975	$354,023.53
1976	$507,357.52
1977	$508,407.58
1978	$592,292.92
1979	$730,135.78
1980	$750,000.00

ODO Budget for past 5 years:

Fiscal Year 1976	$129,400,000 (BDI)
Fiscal Year 1977	$100,900,000 (BDI)
Fiscal Year 1978	$112,300,000 (BDI)
Fiscal Year 1979	$ 97,700,000 (ODO)
Fiscal Year 1980	$101,900,000 (ODO)

12. In each of the 322 cases cited hereinabove, please indicate in how many was delay in processing contributed to by lost or misplaced files.

13. In each of the 322 cases cited hereinabove, please state all factors that cause cases to:

A. Require "special handling" and be sent to ODO for preparation and release of manual reconsideration notice

B. Fail to have reconsideration notices generated by computer due to systems limitations

14. In each of the 322 cases cited hereinabove, please state the number of cases wherein notice of reconsideration issued from:

A. The DDA
B. The DO
C. ODO
D. Any other source

Objection to Interrogatories 12-14:

See Objection to Interrogatories 1-8 stated *supra.*

15. Please define "special handling" and "systems limitations" as used in answering Second Interrogatory No. 1 (page 3).

ANSWER TO INTERROGATORY 15

"Systems limitations" generally mean that the various computer processes have not been programmed to take the required actions, or some portion of the required information is not available in the computer system. Therefore, the system is precluded, or limited, from completing the required action.

Another type of "systems limitations" is the kind in which specific computer stoppages have been programmed because of complexities or certain case characteristics. Cases appearing to have over-large payments or certain apparently questionable paragraphs in the notice will be rejected by the system and referred to a reviewer for either confirmation or correction.

"Special handling" means human intervention is required. It means review and certification by disability examiners, claims authorizers, and/or benefit authorizers, as necessary and appropriate. These examiners/authorizers determine the correctness of apparently conflicting information, identify or write the correct notice, and compute and authorize payment.

"Special handling" also includes special procedures to expedite the claims material to the examiners/authorizers

and from there to the computer keying facility and typing staffs.

16. Please state the name, title, and address of each individual who contributed to the answer of each one of plaintiffs' Second and Third Interrogatory sets and plaintiffs' Requests for Admissions, specifying which answers said person(s) were responsible for.

ANSWER TO INTERROGATORY 16

Second Interrogatories:

Name	Title	Address
Sherill E. Pierce	Supervisory Social Insurance Program Specialist (Disability)	Social Security Admin. Disability Program Br. Room 1200 John Fitzgerald Kennedy Federal Building Boston, MA 02203
Carmine R. Fuccullo	Social Insurance Program Specialist (Disability)	Social Security Admin. Disability Program Br. Room 1200 John Fitzgerald Kennedy Federal Building Boston, MA 02203
Michael F. Sullivan	Formerly: Social Insurance Program Specialist (Disability) Currently: Supervisory Social Insurance Claims Examiner (Disability)	Social Security Admin. Disability Analysis Br. Room 1634, 100 Summer St. Boston, MA 02110
Donald L. Smith	Social Insurance Program Analyst (Disability)	Social Security Admin. Office of Disability Op. Dickinson Tower T7227 1500 Woodlawn Drive Baltimore, MD 21241

The foregoing individuals made major contributions in gathering and providing information. They also directed and supervised a number of other persons who assisted with the gathering of the data and background information in a clerical capacity, *i.e.*, assisted in the manual review of the data base.

Third Interrogatories 9-11, 15:

Harry Fitzhugh	Litigation Staff	Social Security Admin. OPP Office of Regulations Litigation Staff Room 4319 West High Rise 6401 Security Blvd. Baltimore, MD 21235

Requests for Admissions:

Ted Allen	DDS Administration	103 S. Main Street Waterbury Complex Waterbury, VT 05676

REQUESTS FOR ADMISSIONS

1. Vermont's DDA also makes disability determinations for medicaid claimants.

Response: Admitted.

2. In the State of Vermont, the definition of "disability" is identical for programs under Titles II (disability insurance) and XIX (medicaid) of the Social Security Act.

Response: Admitted.

3. Vermont's Welfare Assistance Manual, § 2423.58b requires initial medicaid disability determinations to be furnished to the applicant within fifty (50) days of date of applications.

Response: Denied. Vermont's Welfare Assistance Manual (WAM) § 2423.518 requires the DDA to complete its action within fifty days unless unusual circumstances apply or delays occur beyond DDA's control. WAM 2121 allows for an additional ten day period for Department of Social Welfare action on the claim. Sixty days is the correct overall time limit from date of application to date of notification of decision.

I have read and reviewed the foregoing Answers to Plaintiffs' Third Set of Interrogatories and they are true to the best of my knowledge and belief.

/s/ Harris Factor
HARRIS FACTOR

Subscribed and sworn to before me this 5th day of September, 1980.

/s/ [Illegible]
Notary Public

My Commission expires: 7/1/82

The foregoing Objections and Answers to Requests for Admissions are made on defendant's behalf by her undersigned attorneys.

Respectfully submitted,

ALICE DANIEL
Assistant Attorney General

WILLIAM B. GRAY
Assistant United States Attorney

/s/ Paul Blankenstein/amg
PAUL BLANKENSTEIN

/s/ Anne M. Gulyassy
ANNE M. GULYASSY
Attorneys, Department of Justice
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Room 3339—Civil Division
Washington, D.C. 20530
Tel: (202) 633-4263

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY and AMEDIE MAURAIS, on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

RICHARD S. SCHWEIKER, Secretary, United States Department of Health and Human Services, DEFENDANT

DECLARATION OF THEODORE S. ALLEN

Theodore S. Allen hereby declares and states as follows:

1. I am the Administrator, Disability Determination Services (DDS), of the Vermont Agency of Human Services. I have been employed as the Administrator since October 1, 1978.

2. The DDS makes medical determinations regarding disability for the Social Security Administration (SSA) for Title II and Title XVI (SSI) claimants at the initial and reconsideration level, for both initial claims for benefits and continuing disability investigations (CDI).

3. Prior to my appointment October 1, 1978, the DDS did not have a full-time, permanent Administrator for over one year. In 1977, the administrator experienced serious health problems and was frequently absent on sick leave until he retired for medical reasons in early 1978. An Acting Administrator was appointed at that time. Because he perceived that he would not be appointed Administrator, the DDS had no effective leadership until I assumed the Administrator's position.

4. In the summer of 1978, the SSA radically changed the quality control standards for Title II and Title XVI

cases and substantially increased the documentation requirements. Without a permanent Administrator, the DDS was particularly ill-equipped to integrate these changes.

5. From my experience in state government and vocational rehabilitation, I was generally familiar with the work performed by the DDS, but I spent my first several months learning about disability determinations, personnel, the organizational structure and the technical aspects of the DDS. In the last two years I have learned how things worked, what the situation was, what needed to be done, and what could be done about it.

6. In November, 1978, one of my first actions was to request additional positions, both for examiners and clerical positions. In January, 1979, I initiated work on ordering word processing equipment which was in place by January, 1980, and fully operative by July, 1980.

7. Prior to my arrival, cases were assigned based on geographical location. The examiners preferred this system, although it resulted in extreme variations in caseload. In August, 1979, we began an equalized caseload distribution system on intake to stabilize the workload and to make case assignment more predictable. Previously, an examiner could have from 20 to 140 cases per month, being assigned at the rate of one every few days or 20 in a single day. Now, examiners can expect a maximum of 7 to 8 cases in one day and can therefore schedule their time more effectively. Further, since cases are assigned in rotation, the caseload is distributed more equally among examiners.

8. In August, 1979, we also instituted a centralized consultative examination (CE) unit. All CE appointments are made and recorded centrally; thus, when there is a cancellation, a claimant whose appointment is several weeks away can be scheduled for that slot. Also, follow-up for CE appointments is now monitored centrally.

9. A telerecorder system installed in October, 1978, never functioned properly. Doctors were frequently un-

knowingly cut off in the middle of dictating their medical reports. DDS then had to request medical reports from the doctors again although the doctors thought they had dictated the reports. This situation seriously damaged our cooperative relationship with the medical community. A new system has been in effect since December, 1979, whereby a private service transcribes dictated reports. It has operated without problem and we are receiving complete medical reports in a more timely fashion.

10. In a number of cases, the DDS will order a consultative examination. Often times DDS has little control over the scheduling or receipt of the doctor's report. In addition, in some cases the need for a CE is not established until late in the reconsideration process, *i.e.*, when the available medical evidence on file and indicated by the claimant is found to be insufficient. Sometimes, even after a reconsideration determination is made, a CE is found to be necessary after quality assurance review at DDS.

11. All reconsideration determinations must be reviewed by the DDS examiner and a physician. All of the doctors work only part-time at DDS and some delay is incurred when completion of the reconsideration must await review by a physician. The orthopedic, neurological, and psychiatric specialists were available only once a week during the time period reflected in the case summaries.

12. After the reconsideration decision has been made, it is subject to quality assurance (QA) review at several levels. In some cases, the reconsideration is returned to DDS by QA for additional documentation. After further development, the case would again go to QA. Prior to 1978, the documentation standards on reconsideration were less rigorous than they are now. DDS has experienced a period of adjustment in revising its review procedures to meet the new documentation standards.

13. One of my first priorities as Administrator was to upgrade and increase the number of examiners at

DDS. As of August 1980, I had approval for and hired three new examiners. In addition, I hired three other employees in clerical positions. Although these new examiners have helped to improve DDS's processing times, a minimum training period of six months to two years was required before reaching peak efficiency.

14. I determined that one DDS employee should be terminated because of unsatisfactory performance. This employee appealed the termination which effectively froze one position for five months. My decision to fire this employee was upheld on May 28, 1980 and the vacant position was filled on August 11, 1980.

15. Several employees have performed at a less than satisfactory level. After warnings regarding their performance, they have improved considerably.

16. I determined that a need existed for a supervisor for the examiners. In December, 1979, I promoted an examiner to supervisor, but consequently lost the services of an excellent examiner. The individual selected for supervisor did quite well, considering that we were still in the process of defining the supervisor's role and training the incumbent during the first year. I have found that the benefit of the functions performed by the supervisor has outweighed the detriment of the loss of an examiner.

17. One significant problem with the termination or promotion of examiners is the difficulty in replacing such employees. The same problem occurs when additional examiner positions are created. It is extremely difficult to find experienced examiners. Generally, examiners are or were employed by state agencies in other states and are unwilling to relocate, particularly if the position available has a limited duration. Thus, there was, and is, a problem in filling examiner positions at DDS.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Theodore S. Allen
THEODORE S. ALLEN
Administrator
Disability Determination Service
Vermont Agency of Human Services

Executed on: Sept. [?], 1981

SOCIAL SECURITY ADMINISTRATION EVALUATIONS

EXHIBIT 18

SOCIAL SECURITY ADMINISTRATION
BOSTON REGION

MEMORANDUM DI 17-1
Date: March 20, 1979
SD-11

TO : Joseph D. Lonergan
Assistant Regional Commissioner
Disability Insurance

FROM : Gerald G. Evans
Program Operations Officer

SUBJECT: Report of a Visit to the Vermont State Agency on March 13 and 14, 1979

I. *Productivity*

1. *Aged Case Lists*

The DDS is presently employing two different methods of monitoring progress on aged cases. One is the bi-weekly aged case report, which lists all cases over 70 days old, what the expected completion date is, and what the last two actions were. These forms are reviewed by the Administrator and the Supervisor in an attempt to assist the examiners with identifying problem areas and adjudicating the cases. In addition, during the past few weeks, the DDS has adopted a policy whereby all cases, as they become 30 days old, are placed on a list and are reviewed by the Deputy Administrator in an attempt to spot cases which, might become 70-day cases. At present, it is too early to tell whether or not this recently-adopted procedure will have a significant impact on the number of 70-day cases.

I have been reviewing the 70 day aged case lists for a number of months and it appears that the main reason for the high percentage of aged cases in Vermont is lack of timely followups and basic inadherence to sound development practices. The Administrator is aware of these deficiencies, and procedures and monitoring devices has been and are continuing to be activated and monitored to give the DDS control over this problem. At present, there has been an increase in the earlier placement of consultative examinations. In the past, numbers of unproductive followups for medical evidence of record to unproductive sources had taken place prior to the placement of the CE exam. Overall, there should not be a significant increase in the percentage of claims needing CE's as most of the CE's would have been ordered albeit at a later date.

2. *Accountability*

By the time this report is read, an employee of the DDS will have received a written warning placing him on probation to meet acceptable standards of production with a 30 and 180-day time frame specifically spelled out. It is anticipated that this written warning and interim rating will have a beneficial effect beyond that one recipient. There are a couple of examiners in the DDS whose morale has suffered because of the fact that poor performing examiners have continued to get help and reduced caseloads while they were expected to pick up the slack. For the other examiners whose performance leaves something to be desired, this will serve as a warning.

3. *Processing Time Goals*

Mr. Allen is in receipt of several issuances from several regions outlining projected targets for cases

within DDS processing. A number of these time goals for the various stages of case management have been adopted such as a ten-day diary for requesting medical evidence of record and only one followup. These have been presented to the examiners and now it appears to be at the point where constant management pressure is necessary to get the examiners to follow these guidelines.

4. *SPAR Returns*

Each month, upon receipt of the list from the CRS showing SPAR returns over 60 days, the Deputy Administrator goes through all of the cases to analyze if appropriate action is being taken to speed these cases along. It appears that slow progress in reducing the number and average age of these SPAR returns has been made and it is anticipated that, in the ensuing months, the problem of severely aged SPAR returns will cease to be a continual problem. It is expected that this will be achieved by constant monitoring of examiner handling of the SPAR returns in terms of quality and timeliness and attempts at training on the issues involved.

5. *Clerical Supervision and Productivity*

The clericals in the DDS have been divided into two reporting units. It is anticipated that this line of reporting will make the productivity of the clericals less subject to variation. In addition, some cross-training of clerical functions is being undertaken so there will be more flexibility in assigning workloads. Basically, one supervisor has six clericals reporting to her and their main functions tend to be in the case processing area. The other supervisor is overseeing the technical assistant, systems, and fiscal functions as well as having the other supervisor report to her.

6. *Fiscal Unit Productivity*

Since the clerical reorganization, the fiscal unit is keeping current with payment of the bills for medical services and is slowly but steadily cutting down on the backlog. At the present time, a portion of the delay in making payments to consulting physicians is due to a backup in the state fiscal unit. The backup, in part, is due to the state fiscal unit being shortstaffed and the fact that, in the past 30 days, the DDS has sent down approximately 1,000 bills for payment.

7. *PPMY and Backlog*

The DDS's past performance since the begining of the current fiscal year in terms of the raw and adjusted PPMY were reviewed and the Administrator is aware that, on an adjusted basis, Vermont is significantly off the regional pace in PPMY. The PPMY was reviewed in terms of the current week's work pending and expected examiner productivity. The ensuing accountability actions directed toward the examiners are expected to produce enough increase in productivity so that during the next eight to twelve weeks, the DDS should be able to significantly whittle away at the cases pending so that it can be brought down to acceptable levels.

II. *Medicaid*

The Department of Social Welfare for whom the Title XIX determinations are made by the DDS, has agreed to pay on a direct billing basis for examiner and physician time at fair hearings. The DDS is carefully logging the examiner and physician expenditure of time to ensure that the energy devoted to Title XIX does not impact on the resources allocated for Titles II and XVI. The Administrator is keeping a close personal watch on this situation.

III. *Equipment*

1. *Telerecorder*

The Dictaphone telerecorder machine issue has still not been satisfactorily resolved. The recently-purchased large capacity Dictaphone machine was causing trouble by cutting off dictating physicians. After extensive bench testing, it was determined that the individual unit under laboratory conditions was performing well. During these tests, the DDS was in receipt of a small capacity loaner machine and, after an initial adjustment, this machine has not cut off any physicians. The drawback, of course, is that it occasionally cannot keep up with the physician input. The local Dictaphone service man has made contact with the factory engineers who will shortly be coming to Vermont to compare and field test various units and compare the factory specifications.

At the present time, it is thought that the new State Dimension phone system is responsible for the trouble. The purchased equipment is highly sensitive and may be encountering difficulties due to extraneous noises and electrical impulses in the phone system. For example, the machine automatically stops recording after a 30-second pause on the part of the dictator and various noises within the phone equipment are thought to be responsible for cutting off. The situation is being monitored.

2. *Word Processing*

There is a temporary holdup within the State for the requested word processing equipment as the State purchasing people believe there is cheaper equipment available which would do the same job. After comparing notes with the IBM representative, a case was made that the cheaper equipment from another company did not have the same random

access and other capabilities that the IBM equipment had. This argument is being presented to the appropriate committee and it is hoped that approval will be given to the State purchasing office to contract for this equipment.

3. *Equipment Performance Records*

The Administrator has given to the Administrative Aid the responsibility of setting up and maintaining the equipment performance records to record downtime on the equipment in the DDS.

IV. *QA Related Activities*

1. *Title XVI Accuracy*

The recent decline in Vermont Title XVI accuracy has been identified and should be improving over the next couple of months. For the period of November, December and January, Vermont received 14 SPAR returns from the Claims Review Section. One examiner had 10 of the 14 returns and 8 of them 10 involved medical vocational allowances. This explains the reason for the much lower allowance rate accuracy. A review of the 1774's indicates that this one examiner has a tendency to make slight impairments into moderate impairments. The corrective action that is to be undertaken is training and awareness for the examiner and 100% of this examiner's medical vocational allowances will be reviewed by the Quality Assurance unit. It is also anticipated that the new vocational regulations requiring RFC's will tend to eliminate, the tendency of excalating the severity of impairment. The Administrator has calculated that, due to the small number of cases reviewed, one SPAR deficiency a month will result in excellent accuracy. Two returns put them at about the regional average and three returns, of course, drops them below the

regional average. At this time, it is hard to measure the impact that the vocational regulations will have on the accuracy during the next couple of months but the factors which have caused the recent decline should be eliminated.

2. *Sample Attainment*

I had targeted sample attainment for one of the activities to be discussed in the DDS because of some recent reports. During my visit, a call was received by the DDS from the Regional Office to check on sample attainment because the second tier sample attainment of both Titles at recon. were significantly off for the 12/78 quarter. The Title II sample attainment in Baltimore was zero and the sample attainment at the CRS was only 43% of the expected yield. A check with the QA unit and clericals assigned to the sample attainment revealed the shortcomings in both areas and they have now been corrected. For some reason, the manual selection of the Title II recon. cases was discontinued due to a misunderstanding of a change in routing procedures. This has been corrected. The Title XVI dropoff was explainable by several clerical changes in the unit responsible for this sample attainment. A review of the January figures indicates that the sample attainment under Title XVI was much better. It was recommended by Carmine Fuccillo that the instructions for sampling be put in writing and maintained by the clericals responsible and in the QA unit. It will be determined which one individual will be assigned the prime responsibility for monitoring the sample attainment process.

> *DDS Action Items: Insure that instructions for the proper sample attainment and selection methods are written down for both titles and assign one person the overall responsibility for monitoring this process.*

3. *Vocational Regulations*

A review of some cases in the QA unit with medical vocational factors involved revealed that the rationale being used is much more extensive than had been present in the past. It is taking the examiner much more time to complete these requirements and the QA examiner revealed that it takes longer to review these cases. No projections are being offered for the length of time that either one of these functions will take once the basic technical material is mastered. It became apparent through discussions with the QA examiners that the residual function capacity forms being completed by the physicians (particularly the consulting physicians) are causing problems because of unfamiliarity with the concept of assessing RFC. There may be a tendency developing for an overall assessment of residual capacity rather than how the impairment by itself effects the residual capacity. These items will be closely monitored and reviewed.

After some discussion, it was suggested that, perhaps, sometime after six or eight weeks goes by, a regional conference on the new vocational regulations as to their implementation, problems, and QA review impact could held.

It was also mentioned that the age of the claimant in those cases where age is critical would be determined as to the age at the time of adjudication rather than the age at the end of the waiting period or the alleged date of onset.

4. *Continuing Disability Investigations*

The statistics for the accuracy rates for medical continuances were reviewed with the Administrator and he is aware of their poor performance in terms of accuracy over a six-month period. This problem

is being addressed by redistributing the CDI workload to more than one examiner and emphasis to the prime CDI examiner that the requirements are to assess the disability as it stands at the time of the CDI rather than looking for medical improvement. It appears that this point has made an improvision and we are expecting improvement. The optimism for improvement is further strengthened by the fact that the upcoming Regional Training session on CDI's should reemphasize this as well as several other problem points.

5. *Overall Accuracy*

A number of reports dealing with the various aspects of Title II and XVI accuracy were reviewed with the Administrator and he expressed the opinion that, in some of the categories, the monthly reports tend to be meaningless in view of the small numbers sampled. He indicated that the quarterly reports tended to be more meaningful but recognized the fact that seeing monthly statistics could give the skilled eye a warning of a developing problem.

V. *Other*

1. *"No Show" CE's*

The DDS is unable to assess the impact of the revised CE letter and pamphlet in the "no show" rate at the present time.

2. *No Account Number Procedures*

The only difficulty continuing to be experienced by the DDS with this new procedures is the inability to input an occasional presumptive disability allowance because of the lack of account number. They are being notified by the District Office on a timely

basis of the account number. I emphasized that, if telephone calls relay the number, the DO's should be reminded to transmit the administrative message as per Regional instructions.

3. *No Decision Case Study*

The DDS had accumulated a backlog batch of no decision case study forms and they have been transmitted to the DDS. They were reminded that these are to be forwarded to the Regional Office on a weekly basis.

4. *District Office Copies of the 831*

The DDS was reminded that, when they are routing the case folder directly to the CES, they should simultaneously forward the DO copy of the 831 to the appropriate office. The DDS was informed in February and appears to be following this practice.

SOCIAL SECURITY ADMINISTRATION
BOSTON REGION

MEMORANDUM

DI 17-7
Date: June 20, 1979
SD-11

TO : Joseph D. Lonergan
Assistant Regional Commissioner
Disability Insurance

FROM : Gerald G. Evans
Program Operations Officer

SUBJECT: Report of a Visit to the Vermont Disability Determination Agency on June 11 and 12, 1979

I. *Productivity and Case Processing Items*

Extensive discussions with the Administrator concerning recent low productivity reveal that the single largest contributing factor is low examiner productivity. The low examiner productivity also manifests itself in the mean processing time for both Titles II and XVI. The Administrator feels that three examiners have been particularly demoralized in the last couple of months due to the high number of CDI cases received by Vermont. As you will recall, they received a much higher proportion of the CDI extension case project than other DDS's.

Up until a couple of months ago, Vermont had been making slow but steady progress in reducing backlogs and this all but came to a halt with the impact of the 160 cases. The aged case list revealed a large bulge which is moving along as a single unit through the measurable time frames. These cases also require a greater number of consultative examinations and this has added to the processing time.

Vermont has approximately 125 consulting physicians on their panel and the placement of C/E's has been running an average of three weeks. In order to cut this time

frame down, the examiners have been told to ask physicians for appointments within two weeks and to settle for one within three weeks. If this cannot be achieved, they are to discuss the case with the supervisor, Mr. John Ford. Contributing to the problem of consultative examinations has been the constant trouble with the telerecorder machine and attempts at repair. During my visit, I was informed that messages from physicians are still being cut off. In fact, one of the transcribers was typing a cutoff report at the time of my question. Hopefully, this problem can be alleviated with a transcription service.

Instructions will be given to the examiners to consider travelling claimants for greater distances to place timely C/E's with physicians who respond with quicker reports. Once the transcription problem is solved, an attempt will be made to weed out slow reporters or slow appointment givers from the panel of C/E physicians. The DDS has been giving out the 11/78 edition of the message from Social Security concerning medical examinations.

The monitoring of aged cases and better case inventory control is being achieved through the recently-adopted master control system. This list is maintained by tally strips which are put in a metal display rack so that the oldest case appears first and subsequent cases thereafter. This list also enables the central control unit to track cases when they are returned from the Quality Assurance unit. This will prevent cases from remaining in the DDS and not being counted. The person who completes the weekly SAOR report also has the responsibility of controlling the master list. This list appears to be working out well and three additional display pages have been ordered.

A recent random sample by the Quality Assurance unit revealed that 27 out of 82 cases or approximately 33% were denials based on medical vocational grounds. The Administrator estimates that the average medical vocational denial is taking the examiners approximately 40

minutes to complete and this is also responsible for slower processing time.

The monitoring of 60-day cases by the district offices in Vermont continues to be an effective means for communicating case delays to the district office. The aged case list prepared by the Vermont DO's at the close of April, 1979 revealed that, at the time the case lists were prepared, nine of the cases had been cleared at the close of April by the DDS and, by the third week in May, approximately one-half of the remaining cases had been cleared. During my visit, the Administrator received a couple of calls from the district offices checking on aged cases.

Progress has been noted on the monthly CRS-prepared list of aged SPAR returns in that the list prepared on June 1 showed only nine claims where the preceding month had 11 and, both of these figures represent a significant decline from a half a year ago. It was also noted that the average age of the returns on this list appears to be better in that very aged SPAR returns are no longer present.

Many methods and potential solutions were discussed along with all the pros and cons as to how greater productivity could be achieved by the examiners and the clericals. One hindering factor is that the State does not have an annual merit pay review nor is their any award system to reward better-than-average performance.

II. *District Office Relations*

The DDS just finished with the visitations for the Rutland, Vermont Claims Representatives and Operations Analyst. The visitations consisted of two groups of three and three groups of two people coming to the DDS for most of the day on Fridays. The orientation consisted of several examiners who work with the Rutland service area showing the Claims Representatives around the vari-

ous functions of the DDS. This encompassed intake, case processing, Q/A, etc., then actually working a couple of cases with them looking on, so that they could see how the input on the 3398 and related documents, have a direct impact on processing time and quality of the product in the DDS.

The benefits of this orientation may be felt in the near future as the DDS will shortly adopt a project which will be performed by the person who does the screening of the new cases. This individual will have a checklist which will be completed when she screens the cases to annotate by Claims Representative, cases that have omissions or errors. When numbers accumulate beyond what is reasonably acceptable, communication will be made with the appropriate person in the district office. It is hoped that this screening project will show the benefit of the recent Rutland exchange.

The Administrator was informed that three DDS's in Network IV will be receiving cases from district offices with the alleged onset date shown on the 831. This item will be added to the screening criteria for the intake clerk.

III. *Fiscal Matters*

The backlog in unpaid medical bills in the DDS has been reduced to normal pipeline buildup. This was accomplished by having approximately two-and-a-half people working in the fiscal unit. The State recently adopted a new voucher for medical services which has twice as much information as before and, this requires the State fiscal unit to keypunch in twice as much data without any additional clerical help. This has caused a backlog of bill payment in the State fiscal unit. The catchup by the DDS fiscal units, which was five months in being accomplished, will now have to be worked off by the State fiscal unit.

It was noted that Vermont's traditionally low C/E rate of approximately 20% has been running close to 30% for the last four to five months. Accordingly, the budget projections that were made back in December or would be somewhat inadequate as the present outlay is running approximately 3,000 a month more than had been projected. These figures were discussed with the budget unit in the regional office and funds were reallocated to cover the increased costs.

On my last visit, the DDS Director requested figures pertaining to time expenditure for various activities in the DDS. I informed him that the regional office was researching this and, in the interim, FAL 162, dated December 27, 1978, dealing with the budgeted workload factor items could be of some assistance. If the Administrator cannot locate this FAL, he will contact us for a photocopy.

IV. *Word Processing*

Ted Allen is completing a draft letter of applications needed in the DDS from word processing equipment and this will be sent to Digital and IBM for their completion and analysis by the Administrator. On Friday, June 15, Ted saw a demonstration of the Digital equipment in Burlington. I left Ted with a copy of pertinent parts of the IBM GSA catalog dealing with the IBM 6/412 information processor and the IBM 6/420 add-on unit which would enable the IBM system to have additional keying capacity without duplicating the entire unit. Progress is being made in the situation and it now appears that the State Systems Committee will permit the DDS to purchase whichever system is felt to be the best buy for the money and purpose in the DDS. The Administrator feels that, perhaps, a visit sometime in July to the Maine DDS where the System 6 should be fully operational would be the final input to make a conclusive decision.

V. *Medical Affairs*

The State Agency Medical Consultant fee schedule for the State fiscal year 1980, has been settled and the rates call for the physicians to receive $42.40 with any first-year signees at the rate of $40 an hour. Over ten years of service will benefit a physician to the sum of $47.40 an hour with the Chief Medical Consultant receiving a $3.00 an hour differential. There are only two physicians with over ten years of service and they generally average three to four hours a week. It is clearly understood that the new contract rate will not permit any travel time to be paid for at all under Titles II or XVI and that all pay is for time actually spent in the DDS.

VI. *SAOR, SAWS and Systems*

The following items are submitted in conjunction with the May 16 visit report on the above-mentioned subject. At the present time, the metal display rack previously mentioned is being used to control the cases in the DDS. Tally strips are kept in chronological order and are not separated by SAOR category. One individual is keeping this master list and the SAOR report is being prepared at the expenditure of one hour of time each week where previously, it took two people approximately ten to eleven hours to produce this report. The SAOR category breakout is not felt to be productive in terms of the manpower necessary to achieve this at the present time.

The reporting of the medical evidence of record purchases received after a case has been cleared is being worked on. At present, the Administrator is trying to develop a system to make this productive in view of the small amount of medical evidence received after the case has been adjudicated. It will be a trade off between the amount of evidence received and the time needed to utilize such a system.

The SPAR returns are now being kept by the source of origin rather than the Title. Items 38, 39 and 40 dealing with informal remands, hearings, and assistance requests are now active and data will be accumulated. Likewise, SSI child referrals will be tabulated on the weekly SAOR report.

The DDS is now reporting concurrent claims clearances in accordance with the SAOR manual, Chapter 3, Section D. Mainly, a concurrent clearance is reported when the last portion of the case has been cleared and the tally of allowances and denials is according to the number of clearances. An adjustment has been made to show an examiner as full time rather than a trainee and Mr. Ford is now counted as a full-time supervisor.

One person is now responsible for compiling the SAOR and SAWS reports and the consistency between those two reports will be ensured. Training has been received to insure that the SAWS collection will be targeted for the specific activity involved rather than case-related activity.

The recommendation to realign the method for counting aged cases so that the DDS should count only those cases pending over 45 or 70-days rather than those at the 45 or 70-day level has not yet been achieved but should be forthcoming to make it consistent with SAOR requirements. All the systems activity, and all the clerical functions now have backups and other people trained for emergency fill-ins. The previous problem with supplies should be shortly eliminated as the DDS has made a follow up call for supplies and was advised to contact district offices and/or other DDS's when immediate supplies are needed.

VII. *Quality Assurance Activities*

At the time of my visit, the case backlog in the Quality Assurance unit was virtually non existent, just barely

providing enough cases for the pipeline. It was mentioned that, for April, the Title II recon sample realization was one case short in receipt from the two selected for sampling. There was a possibility that, due to the mail time and the small number selected for sampling, that the one receipt rather than two was not indicative of any real problem and that the figures should be monitored for several months before a conclusion could be drawn. The Quality Assurance unit regularly compares the statistics for second and third tier review with their own internal statistics and they find that the main problem consistently pertains to documentation while the percentage of deficiencies is lower on the second and third level.

Processing time was also analyzed and the analysts have been citing excessive time for development on the part of individual examiners and making this known to the Administrator. For purposes of the periodic Q/A reports received in the regional office and Baltimore, the functional analysis is broken up among two examiners. One concentrates on the external returns while the other individual analyzes and writes up the internal returns.

The Administrator asked what has transpired with the recommendation of the work group to restructure the sampling requirements for the smaller States so that they would be statistically sound over a three-month, rather than a one-month basis. I mentioned that this recommendation had been made but, at the current time, no resolution had been forthcoming. He recommended this as a potential incentive to smaller states. If their quality statistics were of an acceptable level for a specified period of time, an incentive be to eliminate some special studies or reduce the sampling size. This, of course, would enable the DDS to concentrate the manpower previously consigned to the Q/A activities areas which might be more productive in the DDS.

VIII. *Potential Areas for Improvement*

Considerable time was spent on the pros and cons of changing the case distribution method from a geographic breakdown to a sequential distribution. This would provide a more uniform distribution of cases and provide the built-in flexibility for assignment of additional cases to more productive examiners on a regular basis. The Administrator appeared to realize that this last step was necessary in an attempt to increase production and, in the ensuing weeks, he will devote time to devising a procedure for implementing this in July. Discussions were held with the supervisor and several examiners in an effort to increase individual examiner productivity. One examiner is now in the third month of a six-month trial probation period and conversation was held about the feasibility of serving a similar probation period on another low producing examiner.

MEMORANDUM

DI 17-7
Date: August 10, 1979
SD-11

TO : Joseph D. Lonergan
Assistant Regional Commissioner
Disability Insurance

FROM : Gerald G. Evans
Program Operations Officer

SUBJECT: Report of a Visit to the Vermont Disability Determination Agency on August 1 & 2, 1979

I. *Systems Activities*

1. *Classification*

The Data Transmission Specialist indicated that she felt her job description was in need of updating and reclassification. I informed her that the Regional Office had a model job description which would be forwarded along with some samples from other States. It would then be up to her and the DDS Administrator to rework the job description and process it through the State classification system.

In order to facilitate communications with the Vermont District Offices, a letter is being sent advising the DO's to contact the systems coordinator on systems-related activities and the names of the District Office contacts for systems activities will also be solicited.

2. *Non-Insured Status Alert Project*

The project is proceeding with some of the expected start-up difficulties and one worth mentioning at this point in time concerns the alert on individuals who are insured under the special insured status positions.

3. *Edit Logs*

The edit logs are reviewed daily, weekly, and monthly from an accuracy standpoint and also to insure that the entries are complete. The DDS has received Identical Letter 53-79 and will comply with our request for submission of the edit logs. It has been noticed that most of the edits caused by the district offices are a result of incorrect account numbers submitted by the district offices either into the system or incorrect typing on the 831's from which the DDS transposes data. This has been conveyed to the district offices.

It has been observed in the recent past that there were a number of cases with unusually long processing times at the edit resolution point. Contact with several district offices revealed that certain selected DO clearances were not taking into the system and, likewise, DDS receipt messages were not taking. Contact with the appropriate district offices was instituted with DOS and our systems specialist being made aware of these problems and it appears that they are present to some extent with other States and perhaps other regions. What makes this somewhat unusual is that not only is the system not entering the data but there is no evidence of a rejection. Along these same lines, it has been noticed that, occasionally, SAOR messages are received over the teletype in Boston but not all the time in Baltimore and even on one occasion, the SAOR report was received by Baltimore and not in Boston. Perhaps some of the same systems problems were present with the SAOR difficulties.

II. *Word Processing—Telerecorder—Supplies*

1. *Word Processing*

August 9th is the due date for submission of bids by vendors of word processing equipment according

to DDS listed specifications. The submissions will be evaluated as quickly as possible and the selection made and cleared through the Regional office.

2. *Telerecorder and Transcription Service*

The initial submission for a contract for transcription services was returned by the Secretary of Administration in Vermont as being too costly. The Administrator reworked the proposal to show that the proposed spending amount reflected a doubling of the present amount of transcribed material. In addition, the Administrator was advised that additional points were that greater flexibility in staffing would be taken care of by the contract and that, this would provide better service to the citizens of Vermont and it was hard to place a dollar amount on that.

3. *Supplies*

Vermont has been experiencing difficulty in receiving supplies during the January and June ordering periods. In fact, our office was involved in placing an emergency order for four needed items on May 21st. On follow-up, it was revealed that Baltimore had no record of the request for the Vermont supplies and Vermont was requested to send a memo to Mr. Frank Covert in Baltimore requesting the needed supplies. This was done on July 20, 1979 and I asked senior clerk, Beth Bragg, to diary the memo and inform us if the supplies weren't received.

III. *CDI Extension Project*

The status of the project was reviewed with the Administrator in view of the percentage completed and the new target goal of 95% by August 17th. The Administrator indicated the middle of August would see the com-

pletion of approximately 95% of the cases. A reorganization of the case distribution system and the handling of the CDI by other senior examiners should enable them to make significant progress in the ensuing weeks. Accordingly, the speedy resolution of the CDI cases will show a significant drop in the number of CRS returns outstanding in the DDS over 60 days as a good portion of this aged list is comprised of CDI claims. The fact that this project was to receive top priority was again stressed.

IV. *Productivity-Related Items*

1. *Corrective Action Plans*

Effective with Friday, August 3, 1979, several changes in case processing were instituted and should shortly begin to show positive results. The case distribution system has been changed from that of geographic specialization to a pure rotational assignment. This will allow for a quicker and more equitable distribution among the examiners who can best handle the work and result in shorter processing time. Additionally, this same day will see the inauguration of a centralized CE placement unit handled by a clerical. This individual will place the CE exams, contact the claimants, follow-up with the doctors and perform record-keeping. This will relieve the examiners of some of these clerical-type duties and will permit them to spend more time on case adjudication. It will also allow management greater control over the quality of the CE product and utilization of the better physicians.

In addition, effective with this date, the overtime for Title XIX claims has been discontinued so that the examiners will have more hours of overtime under the Title II and XVI programs.

2. *Poor Productivity*

At the present time, the paperwork to relieve an examiner of his position is being elevated to the State personnel department level to insure all legal processes are being complied with. Additionally, on August 2, 1979, another low producing examiner was given the first step in the process, namely an oral warning to improve productivity. The Administrator will follow up with this individual and take the appropriate actions, if necessary, to terminate employment by entering into the various succeeding stages.

The Deputy Administrator, in lieu of working a partial caseload, is reported to spend significant and regular periods of time with the caseloads of poor producing examiners and taking actions designed to move the cases along.

As an inducement to the examiners, it was decided that, as long as an examiner makes significant progress in reducing their percentage of aged cases, they would not have to submit bi-weekly aged case reports. This will be a requirement for those who do not show progress in reducing their aged cases. It is interesting to note that the examiner who is facing termination had six cases assigned which disappeared and had to be reconstructed. No other examiner during this same time period lost any cases.

3. *Presumptive Disabilities*

Our recent Identical Letter on this subject was emphasized with the Administrator and a couple of examiners as a sure-fire way of reducing Title XVI processing time and benefiting the claimants. The Administrator will emphasize the saving of time for PD's and the Q/A unit will continue to look for

claims that could have been put through this process.

4. *Other Improvements*

A couple of months ago, the Administrator ran a special study on the CE process and instructed the examiners of the various time factors involved and came out with some new procedures designed to speed up the process. Various ways of improving the CE process were discussed and a number of them will be implemented by the centralized CE processes.

It was mentioned that, as soon as the new case distribution and CE systems settled down, consideration should be given to the present system by which cases are diaried for future action. There are no centralized files for cases or followups and individual examiners use different systems. It was recommended that centralized files and the double folder system be utilized. The Administrator will consider these and implement them at the appropriate time if they are felt to be effective.

V. *Q/A Activities*

All of the various Q/A accuracy statistics from the monthly and quarterly standpoint were reviewed, and Vermont continues to perform at an acceptable range of performance.

Several discussions were held on how the quarterly Q.A. reports could be improved and a sample copy from another State was left. The Q/A unit, in their reports continues to be of assistance to management in identifying poor development and untimely actions on the part of the individual examiners.

REVISED CASE SUMMARIES

11, 12, 33, 53

CASE 11 D, F

1.	2/21/79	Recon request filed by claimant
2.	2/22/79	D/O forwarded folder to DDS
3.	2/23/79	DDS read file
4.	2/26/79	DDS ltr requesting medical evidence from Thomas W. Martenis
5.	3/7/79	DDS read medical evidence from Dr. Martenis
6.	3/12/79	DDS reviewed file for severity
7.	3/14/79	DDS unsuccessful phone call to Dr. Martenis
8.	3/16/79	DDS second unsuccessful call to Dr. Martenis
9.	3/19/79	DDS third phone call—Dr. Martenis will send x-ray of hand
10.	3/21/79	DDS read x-ray of hand from Dr. Martenis
11.	3/21/79	DDS examiner signed determination (831)
12.	3/26/79	DDS physician signed 831
13.	4/2/79	DDS input allowance
14.	4/3/79	DDS returned folder to D/O
15.	4/4/79	Run date for payment of allowance

(Revised)

CASE 12 D, Q

1.	2/2/79	D/O telephone interview with claimant
2.	2/7/79	Claimant signed recon reuqest (561)
3.	2/13/79	Recon request (561) read by D/O
4.	2/13/79	D/O forwarded folder to DDS
5.	2/14/79	DDS recd folder
6.	2/22/79	DDS requested evidence from Vermont State Hospital and SSA-401 from claimant
7.	3/22/79	DDS examiner signed recon determination (831)
8.	3/26/79	DDS physician signed recon determination (831) QA-DDS

9.	3/28/79	DDS denial input—date run
10.	3/28/79	DDS forwarded to D/O
11.	4/2/79	Recon denial notice Neither file nor work sheet reflect reason for delay (Revised)

CASE 33 D, I, F, L

1.	7/2/79	Recon filed
2.	7/24/79	SSA-847 (transmittal form) forwarding folder from ODO to DDS
3.	8/7/79	DDS rec folder from ODO
4.	8/7/79	DDS unsuccessful phone call to claimant regarding VA treatment
5.	8/8/79	DDS called claimant again (left message)
6.	8/14/79	DDS prepared ltr to VA for updated Med. evidence but did not send because of no Med. releases
7.	7/21/79	DDS sent Med. releases to claimant for signature
8.	8/22/79	Claimant called DDS regarding last VA treatment
9.	8/29/79	DDS called D/O to obtain Med. releases from claimant
10.	9/6/79	Claimant signed med. releases
11.	9/20/79	DDS examiner signed and physician countersigned determination (833) cessation
12.	9/24/79	DDS forwarded file to ODO
13.	9/26/79	ODO rec folder
14.	10/25/79	Date of recon cessation notice DDS did not obtain any evidence from the VA on recon (Revised)

CASE 53 B, F, Q

1.	2/23/79	Filed for reconsideration; also furnished SSA-3441 "Recon. disability rept." Furnished a copy of rept. from Dr. Alan Rubin and V. R. letter to him stating their services wouldn't help in allowing him to return to work. Also furnished ltr from Richard L. Sortell regarding 8 days of work he had performed. Mr. Sortelle is Pres. of Comm. Services
2.	3/19/79	File to DDS from ODO (for a QA review of initial determination)
3.	3/20/79	File rec'd in DDS
4.	3/22/79	Requested rept. from Dr. Edwards
5.	3/22/79	Voc. form to claimant
6.	4/9/79	Vocation report (SSA-3369)
7.	6/6/79	DO called DDS recon. and was told case still pending
8.	6/7/79	Follow up phone call to Dr. Edwards
9.	6/15/79	Rept. rec'd dated 5/29/79 from Dr. John R. Edwards
10.	6/18/79	Determination signed by examiner and DDS MD. Denial affirmed
11.	7/10/79	DO called DDS re recon. and was told case still pending
12.	7/24/79	DDS input-denial CAPS run same date However, DDS sent denial ltr to claimant and cc to Mr. Sortelle (social worker)
13.	7/24/79	Case ret'd to DO

(Revised)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Civil Action No. 78-266

LEON S. DAY and AMEDIE MAURAIS on behalf of themselves and all others similarly situated, PLAINTIFFS

v.

RICHARD S. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES, DEFENDANT

DEFENDANT'S PLAN FOR IMPLEMENTING THE COURT'S JUDGMENT OF NOVEMBER 6, 1981

Pursuant to paragraph 12 of the Judgment Order filed November 6, 1981, the defendant hereby submits his plan for implementing the relief required therein. Defendant's plan calls for each of the offices identified below to take certain administrative steps as follows:

A. *The Vermont Disability Determination Service (DDS)*

1. Upon receipt of a request for reconsideration, the intake clerk will examine the request to ascertain if the claimant is a resident of Vermont and if the claim is a Title II disability case covered by the *Day* Court Order.

2. If under the Court Order, the intake clerk will attach a Day Court Order flag (Attached hereto) to the folder, complete the DDS identifying data at the top of the flag and annotate part A1 of the flag with the date of the request for reconsideration and the 90 and 180 day dates.

3. If the claim is not under the Court Order, a flag will not be attached and the case will be handled per standard manual instructions.

4. When an examiner receives a flagged folder, the claim will be reviewed to determine whether or not an exception to the Court Order is present. If an exception

is present, or occurs during case processing, part A2 on the flag will be completed, and the case handled per standard manual instructions.

5. If a 90 or 180 day violation should occur while the folder is in the DDS, the examiner will annotate part A3 on the flag and notify the DDS Day Court Order Coordinator.

6. The DDS Day Court Order Coordinator will notify the Montpelier, Vermont District Office of any case for which an interim payment is required. Written confirmation will be forwarded to the district office the same day.

7. The Montpelier District Office manager will be responsible for certifying payment and keying into the SSA computer system the necessary information to effectuate payment. The Montpelier District Office Manager will also forward a notice to the claimant which should arrive at approximately the time of the first payment.

8. The DDS will forward to the SSA Regional Office, each month, a list of all reconsideration cases not excepted from the Day Court Order, that have been pending in the DDS over 70 days. The list will include the date the reconsideration was filed, and the current status.

B. *Office of Hearings and Appeals*

1. Upon receipt of a request for hearing (Form HA-501) in the Manchester, New Hampshire Hearing Office, the docket clerk will examine the request to ascertain if the claimant is a resident of the State of Vermont and if the claim is a Title II case covered by the *Day* Court Order.

2. If the claim is not covered by the *Day* Court Order, the request will be processed in order of receipt (unless applicable to the *Barnett* Court Order).

3. If the claim is covered by the *Day* Court Order, the docket clerk will assign the case to an Administrative Law Judge who will acknowledge receipt of the request

for hearing. If not already done so, a copy of the special notice concerning State of Vermont residents will be sent to the claimant. The Hearing Office will also annotate part B1 of the Day Court Order flag with the date of the request for hearing and the 90 and 180 day dates.

4. If an exception to the Court Order occurs, part B2 of the flag will be completed. If a 90 or 180 day violation occurs, part B3 of the flag will be completed.

5. The Administrative Law Judge in Charge (ALJIC) is responsible for notifying the Montpelier, Vermont District Office each month by telephone of any cases for which interim payment is required. Written confirmation will be sent on the same working day the telephone call is made.

6. The Montpelier District Office Manager will be responsible for certifying payment and keying into the SSA computer system the necessary information to effectuate payment. The Montpelier District Office Manager will also forward a notice to the claimant which should arrive at approximately the time of the first payment.

7. The Regional Chief Administrative Law Judge (RCALJ) is to prepare a written bi-weekly report to the Chief Administrative Law Judge (CALJ) which lists chronologically by date of the request for hearing all cases reported by the ALJIG. The report shall indicate the claimant's name, account number, and current status of case.

8. Special efforts will be required of the ALJIC to insure that claim folders are obtained for Vermont cases within 30 days after the request for hearing is filed. The Regional Commissioner's Office will be contacted whenever a claim file is not received within 15 days after the request for hearing date.

C. *Office of Assessment/Disability Analysis Branch (DAB)*

1. When a Title II reconsideration claim, not excepted from the *Day* Court Order, is forwarded to the DAB in

Boston or Central Office for effectuation of pre-effectuation review (PER), the DDS will annotate the PER flag with, "Day Court Order case—please expedite—See Control Flag Enclosed".

2. On a monthly basis the DDS Court Order Coordinator will furnish the Regional Office Coordinator with a list of all cases under the court Order forwarded to either Baltimore or Boston for processing.

3. The Regional Office Coordinator will control all cases under the court Order that are sent to Boston or Baltimore for review or effectuation, and contact the Montpelier, Vermont District Office if any case requires an interim payment.

D. *SSA District Offices*

1. Upon receipt of a request for a reconsideration or hearing by a Title II only disability claimant who resides in Vermont, field offices will be prepared to provide written notice on the provisions of the *Day* case. They will also be responsible for alerting the processing service centers when the *Day* Order applies to reconsideration cases within their adjudicative responsibilities. In addition, where the district office has adjudicative responsibility, they will refer cases for payment, where DDS has made a disability decision within 180 days, but no systems processing of the decision notice has occurred.

2. Upon notification of a violation by the Vermont DDS, Manchester Office of Hearings and Appeals, an SSA District Office or the Boston Regional Office, the Montpelier Vermont District Office will be prepared to certify payment of Title II benefits for the month of violation. They will also forward a notice to the claimant concerning the payment of interim benefits. The letter will indicate how the violation occurred, when payments will commence and when they will stop, and will also discuss the possibility of overpayment.

3. Upon appropriate notification by Vermont DDS, Manchester Office of Hearings and Appeals, an SSA Dis-

trict Office, or the Boston Regional Office, the Montpelier Vermont District Office will stop payment of interim benefits.

DATED at Rutland, in the District of Vermont, this 31st day of December, 1981.

J. PAUL MCGRAGH
Assistant Attorney General

GEORGE W. F. COOK
United States Attorney

PETER W. HALL
Assistant U.S. Attorney

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DAY C[illegible]NT ORDER CONTROL SHEET

CLAIMANT NAME:

SSN:

CLAIM TYPE:

HEARING TYPE:

ASSIGNED TO ALJ:

A. RECONSIDERATION - To Be Completed by DDS

1. DATE OF REQUEST FOR RECONSIDERATION	90-DAY DUE DATE	180-DAY DUE DATE

2. Claim Excepted from Court Order

EXEMPTION APPLICABLE: (See other side) Circle One: A B C D E

EXPLANATION:

3. DATE RECONSIDERATION DETERMINATION ISSUED:

VIOLATION OF 90-DAY DUE DATE:

VIOLATION OF 180-DAY DUE DATE:

PAYMENT

Date DO Notified of Violation _____

Date Copy of E/R Sent to DO _____

Date DO Notified of Issuance of Determination _____

B. HEARING - To Be Completed by Hearing Office

1. DATE OF REQUEST FOR HEARING	90-DAY DUE DATE	180-DAY DUE DATE

2. EXEMPTION APPLICABLE (See other side) Circle One: A B C D

EXPLANATION:

3. DATE HEARING HELD

	90-Day Violation	OR	180-Day Violation
Date DO Notified of Violation			
Date Copy of E/R Sent to DO			
Date DO Notified that Hearing Held			

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EXEMPTIONS APPLICABLE AT RECONSIDERATION LEVEL

(A) The claimant offers new medical evidence or reports new medical or reports new medical [sic] treatment since his initial determination;

(B) The claimant agrees to undergo a consultative examination when one is suggested by the defendant;

(C) The claimant or his representative causes a delay by failing to provide information needed for reconsideration;

(D) The claimant or his representative requests a delay; or

(E) The delay is in some other way attributable to the aggrieved claimant or his representative.

EXEMPTIONS APPLICABLE AT HEARING LEVEL

(A) The claimant or his representative causes a delay by failing to provide information needed for adjudication;

(B) The claimant or his representative requests a delay;

(C) The claimant or his representative fails to appear for the scheduled hearing;

(D) The delay is in some other way attributable to the claimant or his representative.

AN IMPORTANT NOTICE CONCERNING YOUR RECONSIDERATION REQUEST

On November 6, 1981 a decision was issued by U.S. District Court Judge James Holden in the case of *Day* v. *Schweiker*. He ordered that the Social Security Administration must issue a decision on your reconsideration request within 180 days of your request for a reconsideration. The court's decision applies to all reconsideration requests filed 12/30/81 or later.

This requirement will not apply if any of the following events occur during the development of your reconsideration:

1. You or your representative offers new medical evidence or reports new medical treatment
2. You agree to undergo a consultative examination when one is suggested by Social Security
3. You or your representative cause a delay by failing to provide information necessary for deciding your case
4. You or your representative request a delay
5. The delay is in some other way caused by you or your representative

If none of the above exceptions apply in your case, and the Social Security Administration has not made a decision on your reconsideration request within 180 days, Social Security must begin paying your interim disability benefits in the first month after the month in which the 180 days time limit is reached.

These benefits will end in the month that a reconsideration decision is made unless the decision is favorable to you. If the decision is favorable, you may continue to receive payments. If the decision is unfavorable, payments will stop, and all prior payments you had received under the court order would be considered overpayments. You would be required to reimburse the Social Security Administration for the total amount of all such overpayments.

AN IMPORTANT NOTICE CONCERNING YOUR HEARING REQUEST

On November 6, 1981 a decision was issued by U.S. District Court Judge James Holden in the case of *Day* v. *Schweiker*. He ordered that an Administrative Law Judge must hold a hearing in your case within 90 days of the date you filed the request for hearing. This requirement does not apply if any of the following events occur during the preparation of your case for hearing:

1) You or your representative cause a delay by failing to provide information needed for deciding your case;

2) You or your representative request a delay;

3) You or your representative fail to appear for the scheduled hearing;

4) The delay is in some other way caused by you or your representative.

The Judge also ordered that the hearing must be held within 180 days of your request for reconsideration of the denial of your claim for benefits, provided that your reconsideration request was made on or after December 30, 1981. In calculating whether or not 180 days has passed since your request for reconsideration, the number of days between the date of the decision on your reconsideration request and the date the Social Security Administration receives your written hearing request will not be counted. The 180 day requirement does not apply if any of the following events occurred during Social Security's consideration of *your* reconsideration request:

1) You or your representative offered new medical evidence or reported new medical treatment;

2) You agreed to undergo a consultative examination when one was suggested by Social Security;

3) You or your representative caused a delay by failing to provide information necessary for deciding your case;

4) You or your representative requested a delay;

5) A delay was in some other way caused by you or your representative.

If none of the appropriate exceptions apply and the Administrative Law Judge has not held a hearing within 90 days of your hearing request and within 180 days of your request for a reconsideration of the denial of your claim for benefits, Social Security must begin paying you interim disability benefits in the first month after the month in which the hearing should have been held. These benefits will end in the month in which the hearing is held. If the final hearing decision is favorable to you, your payments may be reinstated. If the decision is unfavorable, payments you received in the past would be considered overpayments. You would be required to reimburse the Social Security Administration for the total amount of all such overpayments.

SUPREME COURT OF THE UNITED STATES

No. 82-1371

SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

LEON S. DAY, ET AL.

ORDER ALLOWING CERTIORARI

Filed April 25, 1983

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1983 411891 47